Bradley

Reld

Dec. 6. 1881

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 168.

B. S. RUSSELL, APPELLANT,

vs.

JESSE P. FARLEY, RECEIVER OF THE SAINT PAUL AND PACIFIC RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED MARCH 12, 1879.

The point of objection the decree dismiss without costs on cutting the appeal an action on the bond. —

Modify by striking out as dramatic

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INDEX.

	Original.	Print
Proceedings in State court	3	1
Summons	3	1
Bill of complaint	4	1
Opinion of Judge Dillon	21	7
Order modifying order appointing receiver, &c.	31	11
Affidavit of William H. Fisher	35	12
Answer of B. S. Russell	38	13
C. A. De Graff, William Crook, and Nicholas De Graff	51	18
J. S. Wetmore et al., trustees	68	23
Reply	75	26
Order making Wetmore et al., trustees, parties	77	27
Bond of De Graff et al	79	28
Injunction bond	85	30
Do.	87	31
Injunction	90	32
Ojection to reference to jury	96	34
Notice to defendants De Graff & Co. to produce certain documents	97	35
Notice to defendant Russell to produce certain documents	99	35
Affidavit of George L. Otis	101	36
Order to show cause	104	37
Notice of motion to dissolve injunction	106	38
Questions of fact to be submitted to jury	108	39
Affidavit of William H. Fisher	113	40
Dismissal of suit as to Cass, receiver, and the Northern Pacific Railroad Company	117	42
Order to show cause	117	42
Affidavit of William Crooks	118	42
Demurrer of C. W. Mead	122	44
The Lake Superior and Mississippi Railroad Company	122	44
Petition for removal of cause to circuit court United States	123	44
Order granting petition for removal	126	45

Bond	127	46
Exhibit A. (Articles of agreement between First Division Saint Paul and Pacific Railroad Company and Saint Paul and Pacific Railroad Company)	131	47
Exhibit B. (Deed of trust of Saint Paul and Pacific Railroad Company to Thompson et al)	138	50
Exhibit C. (Deed of Saint Paul and Pacific Railroad Company to First Division Saint Paul and Pacific Railroad Company)	189	66
Exhibit D. (Agreement between First Division Saint Paul and Pacific Railroad Company and Moorhead)	199	70
Stipulation of counsel	201	71
Clerk's certificate	202	71
Proceedings in circuit court United States	203	71
Answer of E. M. Lewis, trustee, &c	203	71
Final decree	217	77
Stipulation of counsel	221	78
Agreement between First Division Saint Paul and Pacific Railroad Company and Saint Paul and Pacific Railroad Company	223	78
Mortgage. Saint Paul and Pacific Railroad Company to Moorhead et al	232	82
Lease. Saint Paul and Pacific Railroad Company to First Division Saint Paul and Pacific Railroad Company	273	100
Stipulation of counsel	287	105
Testimony of George L. Becker	299	1 0
C. A. F. Morris	332	127
Andrew De Graff	334	129
M. M. Williams	338	132
William Crooks	341	133
B. S. Russell	360	143
W. G. Moorhead	362	144
R. W. Dorphley	402	158
S. M. Fellows	408	159
Frederick Billings	421	164
George W. Cass	426	165
Exhibit No. 1. (Letter of Lippmann, Rosenthal & Co. to L. Willmar, December 5, 1868)	440	170
2. (Letter of L. Willmar to G. Becker, 9th December, 1868)	441	171
3. (Agreement between First Division Saint Paul and Pacific Railroad Company and W. G. Moorhead)	442	172
4. (Letter of G. L. Becker to W. G. Moorhead, 21st April, 1871)	444	173
5. (Resolutions of directors of First Division Saint Paul and Pacific Railroad Company, 7th August, 1871)	447	174
6. (Resolution of directors First Division Saint Paul and Pacific Railroad Company, 9th December, 1870)	448	174
7. (Letter W. G. Moorhead to G. L. Becker, 23d October, 1871)	448	175
8. (Letter G. L. Becker to W. G. Moorhead, 28th October, 1871)	450	176
9. (Letter J. H. Randall to G. L. Becker, 27th October 1871)	452	176
10. (Resolutions of directors of Northern Pacific Railroad Company, 15th February, 1871)	454	177
11. (Letter of G. L. Becker, president, to W. G. Moorhead, 12th September, 1872)	456	178

		Original.	Print.
Exhibit No. 12.	(Resolution of directors of First Division Saint Paul and Pacific Railroad Company, 17th September, 1872)	457	178
13.	(Extract from minutes of meeting of directors First Division Saint Paul and Pacific Railroad Company, May 10th, 1871)	458	178
14.	(Memorandum of agreement between G. L. Becker, president, &c., and E. D. Litchfield, 15th December, 1868)..	459	179
15.	(Proposals invited for grading, &c., 22d May, 1871.).....	464	180
16.	(Memorandum of orders to pay coupons).....	464	180
17.	(Letter of Lippmann, Rosenthal & Co. to First Division Saint Paul and Pacific Railroad Company, 19th May, 1871)	466	181
18.	(Letter of W. G. Moorhead to De Graff & Co., 20th October, 1871)	470	183
19.	(Letter Moorhead to De Graff & Co)	471	183
20.	(Bill of sale First Division Saint Paul and Pacific Railroad Company to De Graff & Co., 11th November, 1872)	472	183
21.	(Agreement of De Graff & Co., 27th December, 1872) ...	474	184
22.	(Agreement of De Graff & Co. with Moorhead, 2d October, 1871).....	475	184
23.	(Agreement between De Graff & Co. and Moorhead, 5th October, 1871)	483	187
24.	(Agreement between De Graff & Co. and Moorhead, 5th October, 1871.)	491	190
25.	(Extract from letter of Moorhead to Willmar, London).	499	192
26.	(Accounts and estimates).....	500	193
27.	(Letter of Willmar to Moorhead, 30th November, 1871).	528	214
28.	(Letter of Becker to Moorhead, 9th December, 1872) ...	532	215
29.	(Letter of Moorhead to De Graff & Co., 20th October, 1871)	533	216
30.	(Letter of De Graff & Co. to Moorhead, 27th September, 1871).....	534	216
31.	(Letter of De Graff & Co. to Morris, 9th November, 1871).	536	217
32.	(Agreement between De Graff & Co. and Moorhead, 4th December, 1871)	538	218
33.	(Letter of Crooks to , 19th June,).....	541	219
34.	(Letter of Becker to Moorhead, August 31, 1872).....	542	219
35.	(Letter of Moorhead to Russell, 17th October, 1872).....	543	219
36.	(Letter of Moorhead to Becker, 17th October, 1872).....	544	220
37.	(Receipt of De Graff & Co., 27th December, 1872).....	546	221
38.	(Letter of Russell to Moorhead, 27th December, 1872)....	547	221
39.	(Resolutions of directors of First Division Saint Paul and Pacific Railroad Company, 7th August, 1871.) ...	550	222
39½.	(Bill of sale, Moorhead, agent, to De Graff & Co., 18th October, 1872)	552	223
40.	(Letter of Becker to Moorhead, 30th November, 1871) ..	554	223
41.	(Letter of De Graff & Co. to Becker, 26th November, 1871).....	555	224
42.	(Letter of Randall to Becker, 27th October, 1871)	556	224
43.	(Form of account and receipt)	558	225
45.	(Affidavit of William Crooks, 9th July, 1873)	559	225
45.	(Complaint in case of De Graff et al. vs. Saint Paul and Pacific Railroad Company)	568	229

	Original.	Print.
Exhibit No. 46. (Bond of De Graff et al.)	582	236
Deposition of Henry Selby	590	238
Exhibits to deposition of Henry Selby	599–669	241
Bill of complaint and affidavits in case of Kennedy et al. vs. Northern Pacific Railroad Company et al	670	274
Testimony of H. C. Fahnestock	704	298
Exhibit marked C. (Memorandum of railroad iron received)	720	304
Deposition of H. C. Fahnestock in case of Weetjen et al. vs. Saint Paul and Pacific Railroad Company et al., in New York supreme court	721	304
Exhibit marked A. (Currency account, Moorhead, agent, with Jay Cooke & Co.)	732	309
B. (Gold account, Moorehead, agent, with Jay Cooke & Co.)	734	310
Testimony of Hugh McCulloch	738	311
John G. Sibbald	751	316
F. O. French	761	320
W. G. Moorhead	825	348
Appeal bond	908	384
Clerk's certificate	912	385

1 **United States circuit court, district of Minnesota.**

JESSE P. FARLEY, RECEIVER OF THE SAINT Paul and Pacific Railroad Company,
vs.
CHARLES A. DE GRAFF, WILLIAM CROOKS, and Nicholas De Graff, partners as De Graff & Co., The Northern Pacific Railroad Company, The Lake Superior and Mississippi Railroad Company, B. S. Russell, G. W. Cass, receiver of the Northern Pacific Railroad Company, and C. W. Mead, general manager of the Northern Pacific Railroad Company.

Return from State court.

2 3 *Summons.*

District court, 2d judicial district.

STATE OF MINNESOTA,
County of Ramsey:

JESSE P. FARLEY, RECEIVER OF THE ST. Paul and Pacific Railroad Company, plaintiff,
vs.
CHARLES A. DE GRAFF, WILLIAM CROOKS, & Nicholas De Graff, partners as De Graff & Co., The Northern Pacific Railroad Company, The Lake Superior & Mississippi Railroad Company, B. S. Russell, G. W. Cass, receiver of the Northern Pacific Railroad Company, & C. W. Mead, general manager of the Northern Pacific Railroad Company, defendants.

The State of Minnesota to the above-named defendants:

You and each of you are hereby summoned and required to answer the complaint of the plaintiff in the above entitled action, of which a copy is hereunto annexed and herewith served upon you, and to serve a copy of your answer to said complaint on the subscriber, at his office in St. Paul, in said county, within twenty days after the service of this summons upon you, exclusive of the day of such service, and if
4 you fail to answer the said complaint within the time aforesaid the plaintiff in this action will apply to the court for the relief demanded in the complaint.

Dated St. Paul, Minnesota, June 22d, 1875.

I. V. D. HEARD,
Pl'ff's Att'y, St. Paul, Minn.

REC. 168—1

In the district court for the county of Ramsey, second judicial district and State of Minnesota.

JESSE P. FARLEY, RECEIVER OF THE ST. Paul and Pacific Railroad,
vs.
CHARLES A. DE GRAFF, WILLIAM CROOKS, and Nicholas De Graff, partners as De Graff & Co., The Northern Pacific Railroad Company, The Lake Superior and Mississippi Railroad Company, B. S. Russell, G. W. Cass, receiver of the Northern Pacific Railroad Company, C. W. Mead, general manager of said Northern Pacific Railroad Company.

The complaint of the plaintiff respectfully shows that heretofore, in the year A. D. 1873, the plaintiff was appointed receiver of the St. Paul and Pacific Railroad Company, in a certain action then and now
5 pending in the circuit court of the United States for the district of Minnesota, wherein John S. Kennedy and others are complainants, and the Saint Paul and Pacific Railroad Company and others are defendants, with the powers and duties specifically set forth in the order of appointment and amended order in said action, true copies whereof are hereto annexed, marked Exhibit A, wherein the names of the parties to said suit are enumerated, and that as such receiver plaintiff is entitled to the possession of all the iron herein referred to.

The complaint further shows that the St. Paul and Pacific Railroad Company is a corporation created and organized under the laws of the late Territory and present State of Minnesota, and that the First Division of the Saint Paul and Pacific Railroad Company is another and distinct corporation created by and organized under the laws of said late Territory and present State of Minnesota, and thereby authorized to contract for and engage in the construction of the railroads of said first named company as hereinafter stated. The complaint further shows that the defendant the Lake Superior and Mississippi Railroad Company
6 is a corporation duly created by and organized under the laws of the Territory and present State of Minnesota, and that the Northern Pacific Railroad Company is a corporation duly created and organized under the laws of the United States; that the defendant G. W. Cass is the receiver of said Northern Pacific Railroad Company, duly appointed by a court of record in the State of New York, in a certain therein duly then and now pending, and that the defendant C. W. Mead is the general manager of said Northern Pacific Railroad Company; that the defendants other than defendants De Graff & Co. and B. S. Russell are so situated as to do the transporting and removal of the iron hereinafter referred to, and would be the usual and necessary carriers thereof if removed. Plaintiff further alleges that the reason why Messrs. Becker, Thompson, and Moorehead, and the St. Paul and Pacific Railroad Company, and First Division Company, herein referred to, are not made defendants herein is because they are parties to the suit referred to in Exhibit A, which suit is still pending, and wherein their rights, if any, in 4,560 tons of iron herein referred to are fully protected.

7 That heretofore, and on or about the first day of April, 1871, the said Saint Paul and Pacific Railroad Company and the said First Division of the Saint Paul and Pacific Railroad Company made

and entered into a certain agreement with each other, whereby the said the First Division of the St. Paul and Pacific Railroad Company, which is hereinafter described as the First Division Company, undertook and agreed to construct and equip for the said the Saint Paul and Pacific Railroad Company, which is hereinafter described as the Saint Paul Company, certain three hundred and forty-eight miles of railroad, namely, from Saint Cloud to Saint Vincent, and from Watab to Brainerd, in the State of Minnesota, and also to loan and advance to the said last-named company for its use and benefit in the construction and equipment of said railroad, the sum of fifteen millions of dollars in bonds of the said First Division Company, to be secured by the mortgage hereinafter mentioned, and to be assumed by the said the Saint Paul Company;

8 and that pursuant to such construction contract, and conformity therewith, the First Division Company did resolve to execute and issue and place in the hands of the trustees hereinafter named its certain bonds or obligations to the amount of fifteen millions of dollars, being of one thousand dollars each, payable to Horace Thompson, George L. Becker, and William G. Moorehead, as trustees, or to bearer, on the first day of January, in the year of our Lord one thousand one hundred and one, and bearing interest at the rate of seven per cent. per annum, payable semi-annually, on the first days of January and July in each year, in the lawful money of the United States, if demanded in New York, or in British pounds sterling, at the rate of four shillings British money, per dollar, if demanded in London, at the option of the holder. That the said bonds to the amount aforesaid were accordingly made and executed by the First Division Company and placed in the hands of said trustees, to be issued and negotiated for the sole purpose of procuring means to construct and equip the said lines of railroad, all being of the same

9 tenor and dated the first day of April, 1871, and were declared upon their face to be issued for construction of the said roads from Saint Cloud to Saint Vincent, and from Watab to Brainerd. That simultaneously with the said bonds being so executed and placed in the hands of said trustees, the said Saint Paul Company, for the purpose of securing the payment of the same according to the said contract, made and executed and delivered to the said Thompson, Becker, and Moorehead, as the trustees named therein, and in said bonds, its certain indenture of mortgage, bearing date on the first day of April, 1871, reciting the said agreement and the resolution of the First Division Company to issue said bonds in pursuance thereof, and did, by the said indenture, covenant with the said trustees, for the benefit of any and all persons who should become holders of said bonds, or any of them, to pay the said bonds and the interest that should accrue thereon when and as such principal and interest should respectively become due; and the better to secure the payment of said principal and interest, conveyed by way of mortgage to the said trustees the said portions of its railroad which by the said construction contract were to be constructed by the First Division Company, and for the construction of which the said bonds

10 were by their tenor issued, being from Saint Cloud to Saint Vincent, two hundred and ninety-three miles, and from Watah to Brainerd, fifty five miles, together with the equipments and appurtenances of said roads, and the rights, privileges, and franchises thereunto belonging, together with certain land grants therein described. And it was declared to be the true intent and meaning of said indenture to convey, besides the road-bed, all track, buildings, and materials whatsoever placed and to be placed on said railroads respectively, or on either or any part of either thereof, or acquired or to be acquired for the use

of the same, and also all materials for constructing, operating, repairing, or replacing the said railroads, or either or any part of either thereof, and all property, rights, and privileges whatsoever appertaining to the said railroads, or to either or any part of either thereof, which then were held by the said mortgagor or which should thereafter be acquired by it, its successors or assigns.

The said mortgage contained the usual provisions for the entry of the trustees upon the premises so mortgaged and the sale thereof, in case of default in the payment of principal or interest of said
11 bonds or any of them. And by the said indenture the said The Saint Paul Company did expressly covenant and agree to and with the said trustees and their successors in the trust thereby created that the said company, its successors and assigns, or the said First Division, its successors and assigns, should and would diligently and faithfully use and apply the net proceeds of the negotiation of said bonds, or such of them as should be negotiated, to the construction and equipment of said railroads. And it was further provided by said mortgage that any and all materials whatsoever which should be acquired or furnished for the use of the said railroads, or either of them, by the said First Division Company, should by the mere acquisition thereof for such use become and be part and parcel of the property mortgaged, and become and be subject in all respects to the lien and operation thereof.

That the trust created by the said indenture was duly accepted by the said Thompson, Becker, and Moorehead, and that the terms, stipulations, and conditions thereof were fully assented and agreed to by the First Division Company, and the said mortgage was in fact
12 made in all respects in conformity with their said construction contract and at their request.

That simultaneously with the making of said construction contract and said mortgage, and as a part of one and the same arrangement, the Saint Paul Company made and executed to the First Division Company its certain indenture of lease, whereby it conveyed to said last-named company for the term of ninety-nine years all the said railroads, together with the appurtenances thereof respectively, and the rights, privileges, and franchises thereunto belonging or appertaining, upon terms which gave the said lessee the absolute and complete control, enjoyment, and possession thereof for said term of ninety-nine years, as by the said indenture will appear.

That the said mortgage, soon after the making and delivering thereof, was recorded according to the laws of Minnesota, and thereupon the said the First Division Company proceeded publicly to offer the said bonds to purchasers, upon the faith of the said mortgage and the covenants therein contained, and of the said construction contract, and of the covenants and undertaking therein contained; and
13 the holders of said bonds purchased the same for cash, relying in good faith upon the said mortgage, and upon the said covenants and undertakings of the said First Division Company contained in said contract being faithfully kept and performed, and upon the proceeds of said bonds being faithfully applied and used for the construction and equipment of said roads, and for no other purpose whatever.

And the said First Division Company actually sold, issued, and negotiated to the holders of said bonds $10,700,000 of said bonds, and received from such purchasers thereof the sum of about $8,000,000 in money, which bonds are still outstanding in the hands of said bona fide pur-

chasers; and the said company also received and realized the further sum of $900,000 *dollars* in money by means of hypothecation and pledge of four thousand two hundred and seventy more of said bonds to parties advancing said money thereon.

That at the time of the transactions hereinbefore and hereinafter mentioned, one George L. Becker was and acted as the president of the said First Division Company, and shortly after the making of
14 said mor gage and construction contract, and while the said bonds were being negotiated as aforesaid, the said Becker and Moorehead, in disregard of and violation of their obligations and duty as trustees for the bondholders under said mortgage, and with a view to the diversion and misappropriation which was subsequently made, as hereinafter stated, of the moneys realized on the sale of said bonds, made and entered into a certain contract, in writing, bearing date and executed on the 12th day of May, 1871, purporting to be a contract between the First Division Company and said Moorehead, whereby said Moorehead undertook to build and equip, as required by the laws of the United States and of Minnesota, the whole of said railroads, and to equip the same with a sufficient amount of rolling stock, and to prosecute said work as rapidly as could be done, with money to be furnished therefor by the said First Division Company from the sales of the said issue of bonds; and in consideration of such undertakings on the part of said Moorehead, and of the completion and equipment of said lines of railroad in the manner therein specified, it was by the said contract further agreed that the said Moorehead should be paid and receive all the net proceeds of the said issue of bonds, amount-
15 ing to fifteen millions of dollars, as by the said agreement, of which a copy is in the plaintiff's possession, ready to be produced, will more fully appear; that the said agreement was not made in good faith, with intent, on the part of said Moorehead, to do and perform the works stipulated therein to be done by him, but for the purpose of enabling him to obtain the uncontrolled possession and use of the said proceeds of said bonds.

That, as was well known to said Becker and Moorehead, a very essential part of the security to be afforded by said mortgage to the holders of the bonds issued thereunder consisted of the valuable land grants referred to therein, which under the acts of Congress and of the State of Minnesota granting the same could only be secured by the prompt, punctual, and complete building and equipment of said roads according to the provisions of the said construction contract, which must be on or before the third day of December, 1873, in default of which the said land grants pertaining to so much of said roads as should then remain unfinished would be forfeited and lost by the terms of said acts.

That after the making of said agreement of May 12th, 1871, the said Moorehead proceeded to let out certain sections of the said roads
16 so to be constructed to certain contractors, who undertook to build the same by agreements with him, according to the terms of said construction contract and for the purpose of supplying and furnishing the materials necessary for such railroads, he purchased in Europe and paid for, with and out of the proceeds of said bonds so negotiated thirty-four thousand tons of iron rails, an amount estimated to be and in fact sufficient for the completion of the whole of said railroads, which were duly shipped and consigned to him, or to said First Division Company, and came safely to his possession and control on arrival at the city of New York.

That of said railroads only one hundred and forty-three and one-half

miles have been constructed, and only twelve thousand six hundred and twenty-four tons of the said rails been used thereon, leaving uncompleted two hundred and thirty miles or thereabouts, and which to complete would require all the iron purchased as aforesaid, including all the iron hereinafter referred to, and which iron so referred to was purchased, as herein stated, for the express purpose of being laid on said lines of road, with the proceeds of the bonds referred to in this complaint, said bonds being secured in the mortgage herein referred to.

17 The complaint further shows that of the iron so purchased with the proceeds of said bonds by said Moorehead and covered by said mortgage there is now lying at Glyndon, in this State, seventeen hundred tons of iron rails, and at Duluth, in this State, one thousand tons of iron rails, claimed by defendants De Graff & Co., being 2,700 tons in all, and there is also now at said Duluth, of said iron so purchased as aforesaid and covered by said mortgage, eighteen hundred and sixty tons of iron rails claimed by the defendant B. S. Russell, all of said iron being worth $50.00 per ton. That the greater portion of said iron at Duluth is in the United States custom-house, being held for certain duties due the United States thereon, and that other portion thereof at said Duluth is now being moved to the wharves on Lake Superior at said Duluth, for transshipment out of this State, by and under the instruction of the defendants or some of them.

That the said De Graff & Co. claim to be in possession of the said iron at Glyndon and to own the same; and said De Graff & Co. also claim to own said 1,000 tons claimed by them at Duluth aforesaid; and said B. S. Russell claims to own said 1,860 tons of iron so claimed

18 by him as aforesaid at Duluth; and that the plaintiff has good reason to fear and does fear that said defendants will dispose of and sell said iron to innocent purchasers and take the same out of this State and beyond the jurisdiction of its courts, and that the plaintiff is in constant danger that all of said iron will pass into the hands of innocent purchasers for value.

The complaint further shows that on or about the 11th day of November, A. D. 1872, the said Moorehead was indebted to said De Graff and Company in a large sum of money for work done in the construction of said lines of road, and on said day assumed to transfer the said 2,700 tons of iron rails to said De Graff & Co., as a payment or part payment or security on a past indebtedness on account of such work, and under said transfer the said De Graff & Co. claim to own said iron. That the plaintiff does not know the particulars of said alleged claim of title of said defendant Russell to said iron, but the plaintiff believes and charges the fact to be that said Russell, during all the transactions relative to said iron, was the confidential agent of said Moorehead in the premises; and the plaintiff charges and alleges that neither the defendants De Graff & Co., or any portion of said firm, nor the said Russell were

19 innocent purchasers of or incumbrancers of said 4,560 tons of iron or any part thereof, but, on the contrary, always well knew that the said iron and the whole thereof was subject to the lien of said mortgage, and any transfer to said Russell or to said De Graff & Co. of said iron was a sham and a fraud upon said mortgage, as he always well knew.

That before the said De Graff & Co. obtained their pretended transfer of said iron from said Moorehead, the said defendant B. S. Russell claimed to have all the said 4,560 tons of iron under his, said Russell's, control from a pretended transfer from said Moorehead, and to be the owner thereof; and that said De Graff and Company obtained from said

Russell an order or transfer of said iron (transferred to them by Moorehead as aforesaid), as well as a transfer from Moorehead.

That the said iron at Duluth as aforesaid is so piled, mingled, and confused together that it is impossible to tell until the parties make their selection what portion is claimed by the said De Graff & Co. and what portion by the said Russell.

That upon the iron so in the United States custom-house at Duluth as aforesaid there are duties due the United States of many thousand dollars, and unless the same are paid the said iron will become
20 utterly lost to the parties interested, through an abandonment and forfeiture thereof to the United States for failure to pay such duties. None of said 4,560 tons of iron has ever been laid on said roads. Wherefore the plaintiff prays the judgment of this court that the said pretended transfer of said iron to said De Graff & Co. and to said Russell may be set aside and declared of no effect and void, and that defendants have no interest therein, and that said defendants, and each of them, be restrained from taking said iron from the custom-house at Duluth, or from any other place at Duluth or elsewhere; that the plaintiff in the mean time, upon notice hereafter to be given, be appointed a receiver of said iron in said Duluth custom-house, to take the same in his possession and pay the unpaid duties thereon, and receiver of all said 4,560 tons of iron, and that a preliminary injunction issue to said defendants, and each of them, restraining them, their officers, agents, associates, and servants, from selling, hypothecating, transporting, interfering, or intermeddling with said iron; and for such other and further relief as to this court shall seem just, and for costs.

I. V. D. HEARD,
Attorney for the Plaintiff.

ST. PAUL, *June* 21, 1875.

21 *Opinion of Judge Dillon.*

Circuit court of the United States for the district of Minnesota.

JOHN S. KENEDY, HENRY M. BAKER, AND John S. Barns
vs.
THE ST. PAUL & PACIFIC RAILROAD COMPANY, The First Division of the St. Paul & Pacific Railroad Company, The Northern Pacific Railroad Company, Walter S. Cutting, Russell Sage, Samuel J. Tilden, Edmund Rice, Horace Thompson, George T. M. Davis, John P. Yelverton, Wm. Moorehead, George L. Becker.

The application of the plaintiffs for the appointment of a receiver in this cause coming on for a hearing before me, at my chambers, in the city of Davenport, in the State of Iowa, and after hearing the bill and various affidavits and proofs of the respective parties, and Messrs. Gilman, Otis, and Gilfillan, of counsel for the plaintiffs, and Mr. Big-
22 elow, of counsel for the defendants the First Division of the St. Paul and Pacific Railroad Company and George L. Becker and Horace Thompson, and Mr. Gray, of counsel for defendant the St. Paul and Pacific Railroad Company, and Mr. Smith, of counsel for the defendant the Northern Pacific Railroad Company, appearing specially

and objecting that the court has not jurisdiction of said defendant, and Mr. Cuyler, of counsel for defendant Wm. G. Moorehead; and after due deliberation thereon, it is ordered, adjudged, and decreed that Jesse P. Farley, esq., of Dubuque, be, and is hereby, appointed receiver of all and singular that certain branch line of railroad of the defendant the St. Paul and Pacific Railroad Company, or which the said railroad company by law is authorized to construct, and which is to be constructed and run from a point at or near the town of St. Cloud, in the county of Stearns and State of Minnesota, to the town of St. Vincent, in said State, and also of that other line of railroad of said defendant the St. Paul and Pacific Railroad Company, which said railroad company is by law authorized to construct, and which is to be constructed, and to run from Watab, in the county of Benton, to Brainerd, in the county of Crow Wing, within said State, as contemplated by various acts of Congress of the United States, and also of all the right, title, and interest which said
23 defendant the St. Paul and Pacific Railroad Company has now or shall at any time hereafter acquire by reason of the construction of said railroads, or of either or of any part of either thereof, in, to, and concerning all the lands situate in said State of Minnesota, and granted or intended to be granted by various acts of the Congress of the United States for the purpose of aiding in the construction of said lines of railroad, or which the said defendant the St. Paul and Pacific Railroad Company has acquired, or may be entitled to, or may hereafter acquire, pertaining to said railroads by grants from said State of Minnesota, and of all and singular the road-beds, tracks, bridges, viaducts, culverts, fences, freight houses, wood houses, machine shops, and other shops, and all other structures, buildings, and materials whatsoever placed or to be placed on the said railroads, respectively, or on either or any part of either thereof, or acquired or to be acquired for the use of the same, and also of all locomotives, tenders, passenger, baggage, freight, cattle, and other cars, and all other rolling stock whatsoever, and also of all machinery, tools, implements, fuel, and materials now owned or hereafter to be acquired by said defendant the St. Paul and Pacific Railroad Company for constructing, operating, repairing,
24 or replacing the said railroads, or either or of any part of either thereof, and of all the equipments or appurtenances of the said railroads, or of either or of any part of either thereof, and of all property, rights, franchises, and privileges whatsoever appertaining to the said railroads, or to either or any part of either thereof, now held or hereafter to be acquired by said defendant the St. Paul and Pacific Railroad Company, together with all and singular the tenements, hereditaments, and appurtenances to the said railroad lands and premises, or any part thereof, belonging or in any wise appertaining, and also of all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said defendant the St. Paul and Pacific Railroad Company in, to, and concerning the said railroads, and every part and parcel thereof, with the powers and duties hereinafter expressed.

And the said receiver is hereby authorized and directed forthwith to take possession of all and singular the aforesaid property, and to proceed without delay to construct and complete the unconstructed portions of said railroads, and to put those portions thereof already constructed or partly constructed in good order to be operated as railroads,
25 and to do the same, if practicable, by or before the 3rd day of December next.

And he is further authorized and directed to do and perform all acts

and things necessary to be done and performed to vest and secure in said railroad company the title of all lands granted or intended to be granted by any acts of Congress or of the legislature of the State of Minnesota to the said railroad company.

And for such purpose the said receiver is hereby authorized and directed to borrow, on the terms as to the time of payment and rates of interest set forth in the following form of debenture, a sum of money, not exceeding five million dollars, as shall be necessary to complete and equip said railroads so as to secure said lands, as herein directed, and to issue to the person or persons advancing said sums of money his debentures or certificates, with coupons or interest warrants attached, signed by him, expressing the amounts so advanced, and the terms upon which the same shall be advanced, which debentures or certificates shall be in the form following:

Five years after date, unless sooner paid, for value received, I promise to pay to , or his assigns, the sum of dollars, in gold, with interest thereon at the rate of ten per centum per
26 annum, payable in gold, semi-annually, on the first days of January and July of each year, at the city of New York.

This obligation is issued under and by virtue of certain provisions of an order of the circuit court of the United States for the district of Minnesota, dated on the day of , 1873, a copy of which is indorsed hereon, and is part of the loan hereby authorized to be made by me as receiver of the St. Paul and Pacific Railroad Company, amounting in all to the sum of five million dollars.

The said loan, or so much thereof as may be required to complete the construction of the St. Paul and Pacific Railroad, and shall be borrowed by me for that purpose, under the authority aforesaid, is made and constituted, as provided in the order of the court, a first lien upon all the property, of every nature and description, of the said railroad company; and the earnings of said railroad, after deducting the operating expenses and the expenses of the receivership, are pledged for the payment of the principal and interest of this obligation, according to the tenor hereof.

Failure to pay the interest for six months will make the principal due at option of holder.

Receiver.

(Interest coupons annexed.)

27 Until further order of the court said debentures shall not be sold for less than par in the currency of the United States, and before any shall be sold the receiver must be satisfied that he can sell or place sufficient thereof to complete and equip the said road, or some one or more of the unconstructed intervals within the line thereof.

And it is hereby further ordered, adjudged, and decreed that such debentures or certificates shall be, and they are hereby adjudged to be, a lien for the principal and interest thereof upon all the lands, premises, and property hereinbefore mentioned, prior to all liens or claims thereon whatsoever. And the defendant the St. Paul and Pacific Railroad Company is hereby ordered, adjudged, and decreed to pay the principal and interest mentioned in such debentures or certificates at the times and according to the terms thereof, and in case of failure of said company at any time to pay the interest or principal of such debentures or certificates according to the terms thereof, any holder or any number of holders of such debentures or certificates may institute

and prosecute a suit, in his or their name or names, on behalf of himself or themselves, and all others the holders of such debentures
28 or certificates, to inforce a lien and compel payment thereof.

And the said receiver is authorized to purchase all necessary material, to employ all necessary agents and servants, and to make all contracts necessary for the purpose aforesaid.

And the defendants and each of them having in their, his, or its possession or under their, his, or its control any of the property hereinbefore mentioned are hereby ordered forthwith, upon the demand of said receiver, to deliver the same into the possession of said receiver.

And the defendants and each of them, and their, his, or its officers, agents, attorneys, servants, are hereby strictly enjoined and commanded absolutely to refrain from interfering with the said lands, premises, or any part thereof, and from in any manner interfering with the said receiver in the performance by him of the acts which he is hereby directed to perform. This injunction shall not be construed to prohibit the officers of the St. Paul and Pacific Railroad Company from taking any steps nec ssary to secure to said company titles of lands granted to it, nor to prevent the Northern Pacific Railroad Company asserting before the departments at Washington or in any courts its right to any land granted to it.

29 And it is further ordered that said receiver, before entering upon the duties of his office, take and file with the clerk an oath to faithfully perform the duties thereof; and also file with the clerk a bond, with two or more securities, to be approved by the judge of the district court of the United States for the district of Minnesota, in the sum of one hundred thousand dollars (100,000), conditioned for the faithful performance of such duties.

The said receiver deposit all moneys coming into his hands in the registry of the court in St. Paul, and said money shall be paid out under the rules of the court.

That said receiver, after assuming the duties of his office, make and file with the clerk, on the first day of each month, a full statement of the business of his office during the preceding month.

The main object of this order is to ensure the completion of said roads by the third day of December next, and the receiver is instructed so to act, under the limitations aforesaid, as to see that this object shall be accomplished, and to proceed at once and with expedition.

The receiver shall repair at once to St. Paul and proceed to the discharge of his duties thereunder without delay, and act with expedition.

30 All contracts for construction, or purchase of iron, to be approved by the court or by one of the judges thereof.

It is the intention of the foregoing order that if said five million dollars, or so much thereof as may be required to fully complete said extension lines, shall be furnished to or borrowed by the receiver, to give to the holders of the said receiver's debentures a first lien upon said road, road-bed, franchises, and lands, and each and every part thereof, and the income and earnings of said road, as specified in the above order. If, however, the receiver shall borrow upon the said debentures herein authorized money sufficient to complete only some one or more of the unconstructed intervals in the line of said road, it is the intention of this order to give to the holders of said debentures a first lien upon the road and road-bed so completed, and the franchises of the company pertaining thereto, and all the lands to which the said company may be entitled or may acquire by virtue of the completion

of said part or parts of said road; and if any of the money so borrowed by said receiver on the debentures shall be used for finishing or putting in order any part of said road now ironed, the same to the extent
31 thus used shall be a first lien on the part or parts of said road upon which it is used. All other matters are continued until the first Monday in September next.

Given under my hand, August 1, 1873.

JOHN F. DILLON, *Judge.*

Circuit court of the United States, district of Minnesota. In equity.

JOHN S. KENNEDY AND OTHERS, COMPLAINANTS,
vs.
THE NORTHERN PACIFIC RAILROAD CO., THE St. Paul & Pacific Railroad Co., First Division of St. Paul & Pacific Railroad Co., Walter L. Cutting, Russell Sage, Samuel J. Tilden, Edmund Rice, Horace Thompson, Geo. T. M. Davis, John P. Yelverton, Wm. Moorehead, and Geo. L. Becker, defendants.

The original order appointing Jesse P. Farley receiver herein having been made on the 1st day of August, 1873, and dated of that date and filed herewith, and the matter contained in and by said order coming on again before the court at the chambers of the Hon. J. F. Dil-
32 lon thereof, at Davenport, Iowa, on the 1st day of September, 1873, and having heard Geo. L. Otis, of counsel for said complainants, and Horace Bigelow, esq., of counsel for the First Division of the St. Paul and Pacific Railroad Co., Geo. L. Becker, and others, defendants herein, and on motion of Mr. Otis, of complainants' counsel, it is hereby further ordered that the aforesaid order appointing a receiver herein as aforesaid be, and the same is hereby, modified as follows, viz:

First. After the word "thereof," in line 7 of folio 13, insert the words "or such portions of one or more of such unconstructed intervals as he may deem practicable," so that said clause shall read as follows, viz:

"Until further order of court said debenture shall not be sold for less than par in the currency of the United States, and before any shall be sold the receiver must be satisfied that he can sell or place sufficient thereof to complete and equip the said road, or some one or more of the unconstructed intervals in the line thereof, or such portions of one or more unconstructed intervals as he may deem practicable."

Second. In case the whole interval between a point near Mel-
33 rose and a point some twelve miles south of Glyndon shall be so constructed and equipped, and the portion of the road belonging to said St. Vincent extension which is now ironed shall be completed by the 3rd day of December, 1873, then the expense of so constructing, completing, and equipping the same shall be a first lien on the line of the said St. Vincent extension, its roads, lands, land-grants, franchises, and property, from St. Cloud to the end of the present construction, at a point about 92 miles north of Glyndon.

Third. In case the whole of the Brainerd extension so called, to wit, the line between Watab and Brainerd, shall be so constructed and equipped by the said 3d day of December, 1873, then the expense of so constructing and equipping the same shall be a first lien on the whole of said extension line, its roads, land, land-grants, franchises, and property.

Fourth. All the expense of completing and equipping the portion of said extension lines already ironed, except in the case provided for in subdivision two, shall be a first lien upon the portions so completed and equipped.

Fifth. The expense of all construction of any portion of said lines or either of them, other than construction upon some interval to be
34 fully completed as aforesaid, shall be a first lien upon that portion of the road so constructed, and upon all the land, land-grants, franchises, and property of such constructed portion or portions.

Sixth. The bond of said receiver may be approved by either the judge of the said district court or by the judge of this court.

Seventh. All further and other matters are continued until the first Monday of October next.

Dated September 1, 1873.

JOHN F. DILLON,
Circuit Judge.

STATE OF MINNESOTA,
County of Ramsey, ss:

W. H. Fisher came before me personally, and, being duly sworn, doth say that he is an agent of the plaintiff in the above-entitled action; that the foregoing pleading is true to the best of his knowledge, information, and belief, and that the reason why this affidavit or verification is not made by said plaintiff is that he is absent from the county of Ramsey, Minnesota, where resides his said agent; and further saith not.

WM. H. FISHER.

Subscribed to before me on this 22d day of June, A. D. 1875.

[SEAL.] I. V. D. HEARD,
Notary Public.

35 In the district court for the county of Rams ey, second judicial district, and State of Minnesota.

JESSE P. FARLEY, RECEIVER OF THE SAINT Paul and Pacific Railroad Company,
vs.
CHARLES A. DE GRAFF, WILLIAM CROOKS, and Nicholas De Graff, partners as De Graff & Co., The Northern Pacific Railroad Company, The Superior and Mississippi Railroad Company, B. S. Russell, G. W. Cass, receiver of the Northern Pacific Railroad Company, C. W. Mead, general manager of the said Northern Pacific Railroad Company.

STATE OF MINNESOTA,
County of Ramsey, ss:

Wm. A. Fisher, being duly sworn, says that he is the agent and attorney in fact of J. P. Farley, esq., the receiver of the Saint Paul and Pacific Railroad Company, the plaintiff in the action entitled in the complaint herein, and personally familiar with the management of said road under said receiver, and has given his personal attention to such management under said J. P. Farley for more than eighteen
36 months last past; that the reason why this affidavit was not made by said J. P. Farley is that he is temporarily absent from the State; that the deponent has in his possession as such agent, and attorney copies of the mortgage, construction contract, and of the contract made May 12, 1871, referred to in said complaint; and that his

knowledge and information as to the amount of said bonds sold and the amount of money paid therefor by the purchasers, and the further amount raised by hypothecation of other of said bonds, is derived from John S. Kennedy & Co., the agents of the bankers who sold said bonds, and which statements deponent believes to be true; that he knows the allegations of said complaint as to the amount of work done and rails and materials used on said railroads, and as to the abandonment thereof, to be true from a personal inspection of said work. Deponent further says that he knows that the said firm of De Graff & Co. claims to own 1,700 tons of iron at Glyndon, and 1,000 tons at Duluth, from statements made to deponent by members of said firm, through a bill of sale on account of a debt for work done on said railroads from said Moorehead; and that he knows that said Russell claims the iron at Du-
37 luth referred to in the complaint as claimed by him, through a correspondence between said Russell and said Farley, and that he claims said iron under said Moorehead. Deponent further says that he has seen all the iron referred to in said complaint, and that it was pointed out to him, by persons who assumed to be in charge thereof, as iron that was purchased by said Moorehead for the Saint Paul and Pacific Railroad Company for the purposes stated in the complaint.

Deponent further says that he knows that portions of said iron are now being loaded for shipment out of this State at Duluth from personal observation, and that he knows that there are large amounts of duties due on portions of said iron now in the custom-house at said Duluth from information received from the collector of customs at said Duluth. Deponent further says that he knows from public rumor and reputation that said Russell, at the times referred to in the complaint, was the agent of said Moorehead, and familiar with said Moorehead's connection with said iron; and deponent further says that he has good reason to believe and does believe large portions of said iron will be removed from this State and disposed of to innocent purchasers
38 by the defendants or some of them, and a judgment of this court rendered ineffectual, unless a temporary injunction issue restraining them from so doing.

WM. H. FISHER.

Sworn to and subscribed before me, this 22d day of June, 1875.

[SEAL.] I. V. D. HIARD,
Notary Public.

(Endorsed:) Filed June 22d, 1875. A. Armstrong, clerk.

STATE OF MINNESOTA,
District Court, County of Ramsey:

JESSE P. FARLEY, RECEIVER OF THE ST. PAUL and Pacific Railroad,
vs.
CHARLES A. DE GRAFF, WILLIAM CROOKS, AND Nicholas De Graff, partners as De Graff & Co., The Northern Pacific Railroad Company, The Lake Superior and Mississippi Railroad Company, B. S. Russell, G. W. Cass, receiver, et. al.

39 The separate answer of B. S. Russell, one of the defendants in the action above entitled, alleges and shows as follows:

1st. This defendant admits, upon information and belief, that said

plaintiff was appointed receiver in the said action wherein John F. Kennedy and others were plaintiffs, and the St. Paul and Pacific Railroad Company and others are defendants, and that said plaintiff is acting or assuming to act as such receiver. This defendant denies that said plaintiff, as such receiver or otherwise, is or ever was entitled to the possession or control of said iron in said complaint named, or any of it, and denies that said plaintiff, as such receiver or otherwise, has any right to, interest in, or property in the one thousand eight hundred and sixty (1,860) tons of said iron hereinafter named, and denies that said St. Paul and Pacific Railroad Company has any right to or interest in said iron, or any of it, and denies that the same is the property of said company, or of either or any of the said railroad corporations in said complaint named, or other parties to said action, and denies that the same is or ever has been subject to the said trust deed or mortgage in said complaint named, or in any manner affected by the lien thereof or covered thereby.

40 2d. This defendant, on information, also admits and avers that certain agreements of lease were made by and between the said Saint Paul and Pacific Railroad Company and said First Division Company in and by which said First Division Company were to issue its own bonds, to be secured by a mortgage to be made by said St. Paul Company, the proceeds of such bonds to pass to and belong to said First Division Company to enable said First Division Company to comply with the conditions of the agreements between said companies in that behalf made, but as to whether the said complaint truly and fully sets forth the terms and provisions of said lease, agreements, and deed this defendant has not sufficient knowledge to admit; therefore demands the production of the same; and this defendant further answering denies that said plaintiff or said St. Paul Company has or ever has had or acquired any right or title to the said railroad iron in the complaint named, under or by virtue of the said matters and things in said complaint alleged, or by or through the said alleged trust deed, lease, or otherwise, or has or had at the time of the commencement of this action the right of possession of or any property in said iron or any of it.

41 3d. And this defendant, as to each and every allegation of said complaint, and any part and portion thereof, commencing at folio 19 thereof, and including the rest and residue thereof between said folio and the conclusion of said complaint, denies the same and each and every part thereof not herein expressly admitted; and this defendant admits that said Becker was the president of said First Division Company, and still is president thereof, but expressly denies that said Becker and Moorehead, or either of them, in disregard of or in violation of their duties or obligations as trustees or otherwise, or with a view to the diversion or misappropriation of the proceeds of said bonds, or any money or property whatever, entered into said contract bearing date May 12th, 1871; on the contrary thereof, this defendant alleges that said contract was made in good faith and at the instance of Lipman, Rosenthal & Co., the agents of the holders and purchasers of said bonds, and at the instance, request, and demand of said bondholders, and by the act and resolution of said St. Paul and said First Division Companies, and in good faith; that said agreement was made by said Moorehead as construction agent, and that he has in good faith applied in and

42 about the construction of said extension lines from Watab to Brainerd, and from St. Cloud to St. Vincent, in grading and constructing of the same, and in paying the first claims of contractors thereon for work actually done, all the proceeds of said bonds or prop-

erty by him received under said agreement of May 12, A. D. 1871, or otherwise, of said proceeds; and this defendant, on information and belief, denies that said Moorehead has converted to his own use or misapplied any of the proceeds of said bonds or other property had or received under said contract or otherwise, or has diverted the same or any portion thereof, and avers that on the contrary thereof said Moorehead has in all things relative to the matters set up in said complaint, so far as defendant knows and believes, acted honestly and with intelligence and good faith, both towards bondholders, contractors, and the said railroad companies.

4th. This defendant, on information, admits that said extensive lines are not entirely completed, and that it was desirable to have had the same completed within the time in said complaint alleged, and also that a land grant was made to said State to aid in the construction of
43 said lines, as in the legislative acts, State and Congressional, in that behalf will more fully and at large appear.

5th. This defendant, on information and belief, denies that the proceeds of said bonds or iron purchased out of a portion of said proceeds, if any was in fact so purchased, belonged to said St. Paul Company, but on like information and belief alleges that the proceeds of said $15,000,000.00 bonds of said First Division Company belonged to said First Division Company, and that the said St. Paul Company must seek its remedy, if any it has, upon and under the covenants in said lease and its other agreements with said First Division Company. That said St. Paul Company never had any lien upon the said portion of said iron hereinafter named, nor upon any of said iron or other material purchased by said proceeds, until the same was actually used or specially appropriated for, and forming part of said lines of railroads, or some of them; and defendant denies that the iron hereinafter named as held by this defendant as agent is, or ever was, the property of said St. Paul Company, or of said plaintiff, and denies that said plaintiff, as such receiver or
44 otherwise, is or ever was, entitled to the possession, property in, or control of said iron or any of it.

This defendant, on information, admits that said De Graff and Co. claim to own a portion of said iron rails lying at Glyndon and Duluth, upon which or portion of which customs dues are due and unpaid to the United States. This defendant, on information and belief, for further answer, states that the said bonds of said $15,000,000.00 issue were forewarded by said First Division Company to the bankers and agents of said last-named company, Lipman, Rosenthal & Co., of Amsterdam, Holland, the proceeds of which the said financial agents were directed to forward and transmit to said Moorehead; that said Lipman, Rosenthal & Co., by their own agents, instead of forwarding said proceeds in money, invested a large portion thereof in railroad iron, and forwarded to said Moorehead iron from time to time instead of money, to be used by said Moorehead, or the proceeds thereof, in completing the said lines of road in his said contract named; that owing to the failure to remit such proceeds in money, the said Moorehead, in order to meet the just demands of laborers, and procure the means to carry on the grad-
45 uation of said lines of road, and place the same in a condition for use, was compelled to and did procure, from time to time, loans and advances of money to the amount of several hundred thousand dollars, all of which was used in and actually expended in the grading and construction of said lines of railroad from St. Cloud to St. Vincent, and from Watab to Brainerd; and that of the said iron so sold and transferred by said Moorehead, and upon the sale of which he duly assigned

the bills of lading of said iron to the persons or their assigns so advancing said funds so used in said construction, of which the said 1,860 tons so alleged to be at Duluth, were sold, and assigned, and set over to the United States by a purchase thereof by, and sale and transfer thereof to, the Secretary of the Navy of the United States; and defendant avers that said iron was purchased by the United States as aforesaid, for a valuable and adequate consideration, without any knowledge or notice whatever of the matters of fact in said bill alleged, or that the same was or was claimed to be purchased out of the proceeds of said bonds, or any of them, which said iron so sold to said Secretary of the Navy is the same identical iron in the complaint alleged. That the same is the property of the United States, the duties thereon being unpaid, and

46 *and* the same was held in bond by the United States at the time of said sale and purchase. That this defendant is the agent of the United States, and as such and not otherwise the defendant was about to ship the said iron or a portion of it at the time of the commencement of this action. That the United States, so owning and possessing said 1,860 tons of iron, or an amount supposed to be the quantity, being the railroad iron not set apart to or claimed by said C. A. De Graff & Co., contracted to sell and deliver to Edward Page & Co., of New York, 1,060 tons thereof, and had chartered the steamer Argyle and schooner Maggie McRea, vessels of sufficient tonnage and capacity to carry and remove 1,060 tons thereof, which said vessels were at Duluth, and purposely came there for the purpose of transporting said iron to the port of Dover on Lake Erie; and that by reason of said injunction so allowed and issued in this case the said United States were prevented from delivering said iron on said vessels, and said vessels, after being detained one week or more, were compelled to return to Lake Erie without freight; and that by reason of said writ of injunction the profits and benefits of said sale have been lost, and damages sustained in

47 that behalf, as well as the demurrage and damages incurred by reason of the charter and employment of said vessels and of their departure without freight.

That the time of the payment of the customs due upon said iron is about to or will soon expire, and that said duties amount, as defendant is informed, and so states, to $16.00 gold per ton, which amount would have been realized by the United States upon said 1,060 tons so contracted to be sold, the delivery of which has been prevented by said writ of injunction.

That the value of said iron and all railroad iron has been depreciating and falling, and that the price for which the same was contracted to be sold, and would have been sold and delivered, was more than the present market price and value of said iron; and the same is constantly decreasing, so that the United States has lost and will lose, as deponent believes, by reason of said depreciation upon said 1,060 tons, at least $10.00 per ton. That in addition thereto the United States has sustained loss, and by reason of the demurrage and damages justly claimable by the owners of said vessels, and violation of the contract of affreightment aforesaid in consequence of said injunction, in the amount of $5,000, or more.

48 That said St. Paul and Pacific Railroad Company, of which said Jesse P. Farley claims to be receiver, is utterly and hopelessly insolvent, and had not at the time of the leasing of said lines of railroad then proposed to be constructed any property known to defendant except the lands to be acquired under said agreement upon

the construction of said extension lines, and now has no property except the said incomplete lines which are subject to said lease.

That said bond filed upon the procurement of said injunction is wholly inadequate in amount to indemnify the principal of this defendant, or afford any adequate security to the United States, or to C. A. De Graff & Co.

That in preparing said iron so contracted to be sold for shipment, about 550 tons thereof were at considerable expense removed to and placed ready for shipment upon the docks of the Northern Pacific Railroad Company at Duluth; and in consequence o said injunction the said iron remains upon said docks, subject to a charge of dockage of three dollars per ton per month.

That owing to the scarcety of money and the general suspension of railroad construction, there is likely to be no demand during the
49 present season for railroad iron, and that unless a speedy delivery is permitted to said Edward Page & Co. the benefit of said sale will be lost, and the great value of the property so in charge of this defendant so reduced as to probably compel its sale for the price of old iron.

That the Secretary of the Navy, through the defendants or otherwise, ought to be permitted without restraint to deliver said iron and realize the proceeds of the sale thereof, if such proceeds are required to be held to abide the result of this suit; and that said plaintiff, as such receiver or otherwise, ought not to be allowed to interfere with the said possession or property of the United States. That said plaintiff has no right or title to said iron, or any of it, nor is the same subject to the lien of said alleged mortgage.

Wherefore this defendant prays that said plaintiff be forthwith ordered and required to give an additional injunction bond, with good and sufficient securities thereon, in the sum of at least $200,000.00, to secure and indemnify the owners of said iron and this defendant against loss and damages in the premises; that said injunction be so modified or vacated as to allow and permit the authorities of the United States to remove and dispose of said 1,860 tons of iron so belonging to the United States; that the damages had and sustained by the
50 principal of this defendant, costs, expenses, losses, and liabilities incurred in the premises may be ascertained as authorized by the law and practice of this court; and that said injunction as to the defendant, and as to said 1,860 tons of iron, may be dissolved; and that the defendant have such other order, judgment, relief, and decree in the premises as may be authorized, and as to equity may pertain; and that his costs, &c. may be adjudged to him.

SMITH & EGAN,
Attorneys for Def't Russell.

STATE OF MINNESOTA,
Ramsey County:

B. S. Russell, being sworn, deposes that he is one of the defendants in the foregoing entitled action; that the foregoing answer therein is true of his own knowledge, except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

B. S. RUSSELL.

Sworn to and subscribed before me, this 13th day of July, at said county.

FRED. WOODBOURNE,
Notary Public, Minn.

51 STATE OF MINNESOTA,
County of Ramsey:

District court, second judicial district.

JESSE P. FARLEY, RECEIVER &C., PLAINTIFF,
vs.
CHARLES A. DE GRAFF ET ALS. DEFENDANTS.

And now come the defendants Charles A. De Graff, William Crooks, and Nicholas De Graff, and for answer to the complaint herein deny each and every allegation thereof not hereinafter admitted, stated, or qualified.

They admit the appointment of the plaintiff as receiver, as stated in folios 1 and 2 of the complaint, the corporate existance of the railroad companies mentioned in folios 2, 3, and 4 of the complaint, and the appointment of George W. Cass as receiver of the Northern Pacific Railroad Company. They admit that the railroad companies named in folios 5, 6, 7, and 8 as so doing did agree and contract as therein stated, and that bonds were issued as stated in folio 9 of said complaint, and that to secure the payment of the principal and interest of said bonds a
52 certain indenture of mortgage between the parties named in the complaint was executed, which mortgage, by the terms thereof, covered and incumbered all and singular that certain branch line of road of the party of the first part which the said party of the first part is authorized to construct, and which is to be constructed and run from some point at or near the town of St. Cloud, in the county of Stearns, to the town of St. Vincent, in the county of Pembina; also all and singular that certain other line of railroad of the party of the first part which it is authorized by law to construct, and which is to be constructed and to run from Watab, in the county of Benton, by way of Crow Wing, to Brainerd, in the county of Crow Wing, together with the equipments and appurtenances of the said railroads respectively, and the rights, privileges and franchises thereunto respectively belonging, or in any wise appertaining, or which shall or may at any time after the execution of said mortgage thereunto belong or in any wise appertain.

They allege that the said mortgage also covered the land granted or to be granted by the United States to aid in the construction of said railroads.

That the foregoing is all the property conveyed by any words of
53 grant or conveyance in said mortgage; that the said mortgage contains the following clause in reference to the property actually covered and incumbered thereby, to wit: Including in the premises thereby conveyed, and it being the true intention of these presents to convey the road of the said railroads respectively, and all bridges, viaducts, culverts, fenses, depots, stations, station houses, engine houses, car houses, freight houses wood houses, machine shops and other shops, and all other structures, buildings, and materials placed and to be placed on the said railroads respectively, and also all locomotives, tenders, passenger, baggage, freight, cattle, and other cars, and all other rolling stock whatever, and all machinery, tools, implements, fuel, and materials for constructing, operating, repairing, or replacing the said railroads, or either or any part of either thereof, or any of the appointments or appurtenances of said railroads, or any part of either thereof, and all property, rights, and privileges whatsoever appertaining to the said railroads, or

either or any part of either thereof, now held by the said party of the first part, or hereafter to be acquired by the said party of the first part, its successors and assigns, together with all and singular the tenements, hereditaments, and appurtenances to the said railroad's lands and premises, or any part thereof, belonging or in any wise appertaining, and also
54 all the estate, right, title, interest, property, possession, claim, or demand whatsoever, as well in law as in equity, of the said party of the first part in, to, and concerning the same, and each and every part and parcel thereof, with the appurtenances.

They allege that by the terms of said mortgage the mor'gagor, or its successors and assigns, had the right to remain in actual possession of all and singular the property mortgaged until default should be made in payment of the principal or interest of the bonds secured by it; that it was further provided by said mortgage that in case of such default is should be lawful for the trustees, or for their successors, personally or by attorney or agent, to enter upon and take possession of all and singular the property conveyed by said mortgage, and from henceforth to have, hold, and possess and use the same, and to operate said roads. They allege that by the terms of said mortgage the trustees are granted full power to allow the party of the first part, its successors or assigns, from time, to time to dispose of, according to its or their directions such portions of the equipments, machinery, or implements which should at any time be held or acquired for the use of either of said railroads, and which shall have become unfit or unnecessary for such use.

They deny that the First Division Company ever in any man-
55 ner or form contracted or agreed or assented that any materials or property which should be acquired or furnished for the use of said railroads, or either of them, should, by mere acquisition thereof for such use or otherwise, become a part of the property mortgaged, or in any manner subject to the lien or operation thereof.

They admit that the trust created by such mortgage was accepted by the trustees, and that a lease was executed, of even date with said mortgage, to the First Division Company, for the term of ninety-nine years, of the property so mortgaged.

They allege that the mortgage was recorded in the office of the secretary of state of Minnesota, on the 30th day of August, 1871, and not elsewhere or otherwise.

They admit that the First Division Company put said bonds upon the market and realized thereupon the sum of $8,000,000 and no more. They admit that George L. Becke was president of the First Division Company, as stated in the complaint, and they aver that the said Moorehead did, at or about the date stated in the complaint, enter into a contract whereby the said Moorehead undertook to build and equip the said railroads for the net proceeds of sale of such bonds, payments to
56 be made to said Moorehead by said company under said contract as the work should progress, upon estimates to be made by the chief engineer of said company.

They deny that such contract was in disregard or in violation of the obligations of said Becker and Moorehead as trustees for the bondholders under the mortgage, or that it was entered into with any view to any diversion or misapplication of any moneys, or that it was not entered into with good faith, or that it was entered into for any improper or unlawful purpose whatever.

They aver, on the contrary, that the said agreement was entered into in good faith, and was in fact the best agreement which could have been made for the interest of all the parties interested in the enterprise, whether

bondholders or others, and that such contract was made expressly to advance and protect the interests of those who should become the holders of said bonds.

They admit that a very essential part of the mortgage security consisted of the lands mentioned in the complaint, and that the same could only be wholly secured by the completion of said road by December 3, 1873, in default of which the lands pertaining to so much of the said roads as should then be unfinished would then revert to the United States.

57 They admit that after making such contract the said Moorehead proceeded to let out certain sections of said road to be constructed, and they aver that in October 2d and 5th, 1871, he entered into a contract with these defendants, whereby they agreed to build said roads and to furnish all material therefor except iron, which was to be furnished by the said Moorehead for a certain compensation, to be paid them by the said Moorehead monthly, upon monthly estimates of work done and materials furnished as the work progressed. After the making of the said contract, and in the month of October, 1871, these defendants commenced to do work upon said lines and furnish materials therefor under their said contract, and so continued until the month of October, A. D. 1872, when they stopped working and furnishing materials thereon in pursuance of a notice given them by said Moorehead to do so.

During the progress of said work estimates were made by the chief engineer in charge of the construction of said lines of road, at the beginning of each month, of the amount of work done and materials furnished during the last preceding month by these defendants under their said several contracts. Said estimates were paid by said Moorehead substantially as in said contracts provided up to including the estimate

58 for the month of June, A. D. 1872, but for work done and materials furnished after the month of June, amounting to about $900,000, by these defendants under their said contracts, nothing was ever paid except the sum of $205,000 in cash, and except as herein stated, so that there remained due and unpaid to these defendants at the time of the suspension of said work, on account of work done upon and materials furnished for said line under said contracts, the sum of $600,000 and upwards. The said First Division Company, as these defendants are informed and believe, paid the said Moorehead for the work done and the materials placed upon the same in the month of June, A. D. 1872, but the said company, as the defendants are informed and believe, never made any payment to the said Moorehead for work done or for materials placed upon the said lines of road. Subsequent to said month of June, and at the time of the final suspension of work upon said lines, there remained due and unpaid from the said First Division Company to the said Moorehead, for work done and materials furnished upon said lines under said contract with said company, the sum of $600,000 and upwards, as these defendants are informed and believe, no part whereof has ever been paid except as hereinafter stated, as these defendants are informed and

59 believe.

The reasons why the said First Division Company failed to make payments to the said Moorehead, as by the terms of its said contract with him it had agreed, was, as these defendants are informed and believe, as follows:

The said First Division Company, at the time or shortly prior to the issue of the said $15,000,000 of bonds for the construction of said extention lines, made an arrangement with Messrs. Lipman, Rosenthal & Co., bankers of Holland, Europe, whereby they the said bankers were

to take all the said issue of bonds into their possession and negotiate them for cash.

The said bankers accordingly, in the year 1871 and in the fore part of the year 1872, took into their possession all the said bonds, and proceeded to negotiate the same until some time in the month of May or June, 1872, when, after having negotiated the same to the amount of $10,400,000 par value, they failed and refused to negotiate any more of the same, and retained in their possession and refused to deliver up to the said company the residue of the said bonds, amounting to about $4,600,000 par value. When the negotiation of the said bonds stopped, the said First Division Company had expended all of the proceeds
60 of the bonds which had been negotiated, and did not have and could not procure, and has never since been able to procure, any further means to pay the said Moorehead for work done and materials furnished under his said contract. Had all said bonds been negotiated as was expected and intended when the issue thereof was made, the said company would have had in the proceeds thereof ample funds with which to fully complete and equip said lines of road, and to put the same into operation in accordance with the acts of Congress and the laws of this State relating to such lines. In each of the said contracts between the said Moorehead and these defendants it was provided that whenever, in the opinion of the said Moorehead, it should be necessary to stop any of the work or to diminish the force employed on the said lines, the said Moorehead, by a notice in writing handed to these defendants thirty days in advance, should have the right to cause said work to be stopped or the force employed thereon to be diminished. But the said Moorehead did not, when the means of said company to pay for any further work or materials , as has been hereinbefore stated, notify these defendants to stop work, as he might have done; but, on the contrary, he, acting under the urgent request of the said company and of the said trustees, and under the full and free assent of
61 each and all of them to his disposing of such portions of such iron as might be needed to procure the means with which to pay for further work and materials, caused the said work on the said lines to continue with all due rigor and dispatch until the final stoppage of the work in October, A. D. 1872, as hereinbefore stated, in order that so much of said lines might be completed before March 3, 1873, as could be completed with the means that could be procured for that purpose. At the time of failure of means on the part of the said First Division Company to pay for further work and materials, as hereinbefore stated, but four and one half miles in all of said lines had been completed, and had the said Moorehead then stopped the work, as he might have done, upon said lines, no more of said lines would have been completed prior to March 3, 1873, but by continuing the work on said lines until October, 1872, these defendants were enabled to and did fully complete in all $142\frac{59}{100}$ miles of said road, thereby saving the bondholders $117\frac{59}{100}$ miles of completed road, together with all the rights, immunities, and franchises appertaining thereto which otherwise would have been wholly lost to them and become forfeited to the State of Minnesota. Upon and shortly after the failure of means on the part of the said First
62 Division Company to pay for further work upon said lines, it was fully understood, as these defendants are informed and believe, between said Moorehead and each and all of the said trustees, that the said Moorehead should use so much of said iron as should be necessary to pay for the work done and materials furnished upon said lines in paying for the same or in procuring means to do so, and the said Moorehead was induced, as these defendants are informed and believe, to cause and

suffer the work upon said lines to continue as it did from the fact of his having the said iron subject to his disposal to pay for such work and materials. In the month of December, 1872, there then remaining due and unpaid to these defendants, for work by them done and materials furnished upon said lines, the amount of six hundred thousand dollars and upwards, nearly all of which work had been done and materials furnished after the failure of means on the part of the said company to pay therefor, as aforesaid, the said Moorehead sold and delivered to these defendants, in part payment upon their said indebtedness, all the said 2,700 tons of iron rails in the complaint mentioned as being claimed by these defendants, at and for the sum of $202,500 dollars. They aver that they commenced work under said contract in October, 1871,
63 and continued thereafter steadily until October 5th, 1872, with force and means sufficient to have completed said lines of road within the time required by law had the said Moorehead performed his part of the contract. When only a portion of the work had been done the said Moorehead failed to pay these defendants the amount then due on their contract; and that the company prior to said failure by said Moorehead had failed and refused to pay him what was due him, by reason of the fact that the said company was out of funds; that of the said bonds only about $10,000,000 had been sold, and sales on the remainder had failed to be made, and all the parties were thereby embarrassed, and the main object of the mortgage, viz, the completion of the road, and the bringing thereby under the mortgage the road to be built and the land to be earned, put in great jeopardy.

That these defendants and the said Moorehead then wished and intended to stop work on account of such default, and so notified the trustees aforesaid and the First Division Company, who thereupon urged these defendants to continue the work; assured them that the embarrassments which had caused such failure of payments to and by the said Moorehead were but temporary, and would soon be removed, and payments made, and money enough be forthcoming to complete said
64 roads; that it was of the greatest importance to the bondholders that the lands, which the principal security, should be earned by the construction of the road within the time fixed by law; that if not so earned the bonds would be worthless and all the money expended in the enterprise wasted; that these defendants, under said Moorehead, being in possession of the work and of the force and plans, could easily carry said work along until such embarrassment should pass away, and thereby ensure the completion of said lines, and save the bondholders the property and contingent interests thus imperrilled, and assured these defendants and the said Moorehead that they should in no event suffer or lose by doing as above requested, and urged these defendants and the said Moorehead to comply with such requests, holding out to them the inducement and conceded right of the said Moorehead to protect himself and them against loss by the power of disposition over the iron mentioned in the complaint, which power he had in fact; that the foregoing statements were repeated and vouched for by Moorehead to these defendants, and in pursuance thereof, and induced thereby, they and the said Moorehead did go on in the work under the said contracts
65 after such default, and by the expenditure of their own means did and performed work, and constructed the number of miles of said lines hereinbefore stated, thereby causing several hundred thousands of acres of such land grant to enure to the railroad which would not otherwise have been done. These defendants further aver, upon information and belief, that the said sale of the said iron to them was made with the full knowledge and assent and acquiescence of the said

trustees, and of each of them, both before, at, and after the time of such sales.

And these defendants further aver that ever since the latter part of the year 1872 or the first part of the year 1873 the holders of the said bonds have, through their agents, Messrs. Lipman, Rosenthal & Co., and L. Wilmar, late of London, England, now deceased, and Messrs. Kenneday & Co., of New York, who are the plaintiffs in the said suit wherein the said Farley was appointed receiver, well knew of the said sale of the said iron to these defendants, and of all the facts in connection with the same, and have, through each and all of said agents, who were duly authorized by the said bondholders, after full knowledge of such sale and of all the facts in relation thereto, repeatedly assented to and acquiesced in and ratified such sale, and that defendants'
66 title to such iron was never disputed or called in question by any person until the commencement of this suit. These defendants admit that the said iron is part of the iron mentioned in the complaint; that Moorehead purchased the same in Europe and paid for it; but they aver that they have no knowledge or information sufficient to form a belief whether it was paid for out of the proceeds of said bonds, or how it was paid for. They admit that the said iron was consigned to said Moorehead, and came safely into his possession. They aver that the said iron was, at and for a long time before the property thereof was acquired by these defendants the property of said Moorehead, unencumbered and unaffected by the said mortgage, and that no part of the same was ever in the possession of or acquired or claimed by the First Division Company.

These defendants aver that the duties upon said iron amount to $13,860 *dollars*, of which the defendants have paid $9,180$\frac{89}{100}$ in gold, paying therefor a premium of about fifteen per cent., leaving due $4,679$\frac{12}{100}$, which will be due in August, 1875, and which defendants have arranged to pay.

They deny that they have ever made any preparation, or have any intention to remove any of said iron from this State. They aver
67 that they are in'ocent purchasers of said iron for a valuable consideration, and without any knowledge or notice that the same was subject, or claimed to be subject, to the lien of said mortgage.

They deny that the said Russell ever claimed to own any of said iron or to have any transfer thereof from the said Moorehead. They aver that their iron at Duluth can be readily distinguished and ascertained. They admit that none of said iron has ever been laid on said roads.

Whereupon they pray that the complaint be dismissed with costs.

GILMAN, CLOUGH & LANE,
C. K. DAVIS,
Attorneys for Defendants, St. Paul, Minn.

68 STATE OF MINNESOTA,
County of Ramsey, ss:

William Crooks, having been duly sworn, deposes that he is one of of the above-named defendants; that he has heard read the foregoing answer, and that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

WM. CROOKS.

Subscribed and sworn to, this July 9th, A. D. 1875.

SHERWOOD HOUGH,
Clerk Sup. C't Minnesota.

Filed March 6th, 1876. A. Armstrong, clerk.

Answer of Jacob S. Wetmore and others, trustees.

STATE OF MINNESOTA,
Ramsey County:

District court, second judicial district.

JESSE P. FARLEY, RECEIVER OF THE SAINT Paul and Pacific Railroad Company, plaintiff,
ag'st
CHARLES A. DE GRAFF, WILLIAM CROOKS, and Nicholas De Graff, partners as De Graff & Co., The Northern Pacific Railroad Company, The Lake Superior and Mississippi Railroad Company, B. S Russell, Geo. W. Cass, receiver of the Northern Pacific Railroad Company, C. W. Mead, general manager of said Northern Pacific Railroad Company, and Jacob S. Wetmore, Thomas W. Pearsall, and Thomas Denny, trustees, defendants.

Now come the defendants Jacob S. Wetmore, Thomas W. Pearsall, and Thomas Denny, trustees under the mortgage described in the complaint in this action, admitted by order of court as parties defendants herein, and by leave of court answer the plaintiff's complaint herein.

I. They admit all and singular the allegations in the complaint contained and every part thereof, except as hereinafter denied and qualified.

II. Further answering, these defendants allege that in and by the eleventh article of the mortgage described in said complaint it was, among other things, provided as follows, viz:

"Meetings of the said first-mortgage bondholders may be called in the manner hereinafter provided, or in such other mode as may be fixed by regulations prescribed or established by the bondholders, and the bondholders may vote at such meetings in person or by proxy, and the quorum may be defined, and such other regulations or by-
70 laws in respect to such meetings may be from time to time established, altered, or repealed by the bondholders, acting by the majority in interest, as to them shall seem expedient; and until the bondholders shall act such powers may be exercised by the trustees."

And in and by the fourteenth article of said mortgage it was also, among other things, provided as follows, viz:

"And it is further mutually agreed that the said trustees, or any or either of them, may be removed from office by the vote of a majority in interest of the holders of said bonds, the said vote being had at a meeting of the said bondholders duly held, and being attested by an instrument in writing, under the hands and seals of the persons so voting; and that in case that any time hereafter either of the said trustees or any trustees hereinafter appointed shall die or resign or be removed as herein provided, or by a court of competent jurisdiction, or shall become incapable or unfit to act in the said trust, a successor to the said trustee may be appointed by the holders, for the time being, of a majority in interest of the said bonds there outstanding, at a meeting of said bondholders to be duly convened and held in conformity with the provisions of these presents."

71 And it was further provided in and by the said fourteenth article of the said mortgage that upon the appointment of successors to the trustees removed, as in said article provided, such successor should, by the force of said mortgage, and without any further assurance or conveyance, become vested with and entitled to exercise any and all powers and authorities that the trustees so removed were vested with or entitled to exercise at the time of such removal.

That on the 2d day of April, 1875, the requisite number of bondholders as prescribed by said article eleven of the said mortgage, by their duly authorized attorneys in fact, met in the city of New York, and at such meeting duly fixed, prescribed, and established the necessary and proper regulations and by-laws in respect to the meetings of the holders of the bonds secured by the said mortgage, and also defined what should constitute a quorum.

That afterwards, at a meeting of such bondholders duly holden in said city of New York on the 16th day of April, 1875, the trustees under said mortgage, and therein named, viz, Horace Thompson, George L. Becker, and William G. Moorhead, were duly removed from office and from their trusteeship under the said mortgage, by a vote of a
72 majority in interest of the holders of said bonds, under and by virtue of the authority so conferred on them under the said fourteenth article of the said mortgage, the said vote being had at a meeting of the bondholders duly holden and pursuant to the regulations prescribed and established as aforesaid, and which said vote was duly attested by an instrument in writing under the hands and seals of the persons so voting.

That afterwards, at a meeting of such bondholders aforesaid duly holden in the city of New York pursuant to the regulations prescribed and established as aforesaid, and duly convened and held in conformity with the provisions of the said mortgage, on the 20th day of April, 1875, these defendants Jacob S. Wetmore, Thomas W. Pearsall, and Thomas Denny were duly appointed by the holders, for the time being, of a majority in interest of the said bonds, successors to said Thompson, Becker, and Moorhead, trustees as aforesaid; and these defendants did thereupon duly accept of said trust, and became vested with and entitled to exercise all the powers and authorities conferred upon the trustees named in the said mortgage under and by virtue of the provisions thereof, and they ever since have been and now are the duly chosen and qualified and acting trustees under the said mortgage; that afterwards and prior to the commencement of the action due notice of such
73 meetings of bondholders, of said removal of trustees, and of such appointment of successors was given to the said Thompson, Bicker, and Moorhead.

And these defendants deny that their rights to said 4,560 tons of iron are fully protected in said suit wherein the plaintiff was so appointed receiver, but they allege that the rights of the bondholders, for the protection of whose interests these defendants have been so constituted trustees, will be preserved, and the said iron will be secured to them, provided the court will grant to the plaintiff the relief which he has demanded in his complaint; and these defendants further allege that default has been made in the payment of the interest upon the bonds described in and secured by the said mortgage, and that the holders of the said bonds have no security whatever other than the said mortgage, and that the same is scanty and insufficient, and the whole property covered by the said mortgage, including the iron in controversy in this action, is not of sufficient value to pay twenty-five per

centum of the bonds so negotiated and outstanding under the said mortgage.

Wherefore these defendants pray that the relief which the plaintiff has demanded in his complaint may be granted as against each
74 and every of said defendants other than these trustees, said relief being in fact only claimed as against said other defendants; and in case that such relief cannot be granted in full, that the said iron may be adjudged to be subject to the lien of the said mortgage, and the defendants other than these trustees may be restrained from selling or otherwise disposing of the same, and for such other or further relief as may be just and equitable.

GEO. L. OTIS,
Attorney for said Trustees Jacob S. Wetmore, Thomas W. Pearsall, and Thomas Denny.

STATE OF MINNESOTA,
County of Ramsey, ss:

Geo. L. Otis, of said county, being duly sworn, says that he is the attorney for the said defendants Jacob S. Wetmore, Thomas W. Pearsall, and Thomas Denny, trustees, in the above-entitled action; that the foregoing answer is true to the best of his knowledge, information, and belief; and that the reason why this affidavit of verification is not made by said defendants or one of them is that they are all absent from the county of Ramsey, Minnesota, where resides their said attorney; and further saith not.

GEO. L. OTIS.

75 Subscribed and sworn to before me, on this 14th day of October A. D. 1875.

[NOTARIAL SEAL.] CHAS. E. OTIS,
Notary Public, Minnesota.

Filed October 15, 1875. A. Armstrong, clerk.

District court, 2d district.

JESSE P. FARLEY, RECEIVER OF THE ST. PAUL AND PACIFIC RAILROAD COMPANY,
vs.
B. S. RUSSELL, IMPLEADED WITH DE GRAFF & CO. et als.

Reply.

The plaintiff, for reply to the answer of B. S. Russell, herein denies any knowledge or information sufficient to form a belief as to the truth of the allegations of the answer, or either or any of such allegations, or of any part of each or any allegation, except as charged in the complaint.

76 And this plaintiff denies any knowledge or information sufficient to form a belief as to whether the depreciation in the iron referred to in the answer was $10.00 per ton, or any sum whatever, or that the United States incurred damages in the sum of $5,000 or any other sum by reason of demurrage or damages, or for any other cause, or that the United States or said def't Russell has suffered or incurred damage by any act of this pl'ff or the court in the premises, in any sum

whatever. Wherefore plaintiff demands judgment as in his complaint demanded.

I. V. D. HEARD,
Attorney for Pl'ff, St. Paul.

STATE OF MINNESOTA,
County of Ramsey, ss:

I. V. D. Heard came before me personally, and, being duly sworn, doth say that he is the plaintiff's attorney in the above-entitled action; that the foregoing pleading is true to the best of his knowledge, information, and belief, and that the reason why this affidavit of verification is not made by said pl'ff is that he is absent from the county of Ramsey, Minnesota, where resides his said atttorney; and further saith not.

77 I. V. D. HEARD.

Subscribed and sworn to before me, on the 28 day of February, A. D. 1876.

[NOTARIAL SEAL.] JAS. F. O'BRIEN,
Notary Public, Minn.

Filed March 6, 1876. A. Armstrong, clerk.

District court, 2d judicial district.

STATE OF MINNESOTA,
Ramsey County:

JESSE P. FARLEY, RECEIVER OF THE ST. Paul and Pacific Railroad Company,
vs.
CHARLES A. DE GRAFF & CO. AND OTHERS, defendants.

At special term, October 9, 1875.

This cause came on to be heard before me, at my chambers, on the 2d day of October, 1875, upon the application of Jacob S. Wetmore, Thomas Dennp, and Thomas W. Pearsall, trustees, &c., to be admitted as parties defendant or plaintiff to this action, and it then appearing to the satisfaction of the court that due notice of the said application had been served on all the parties to said action the matter was continued

78 until the next special term of this court, to be held on the 9th day of October, 1875.

And now, at the special term of this court held at the court house in the city of Saint Paul, on the said 9th day of October, 1875, the said application came on to be heard, and having heard Mr. Otis in support of said motion, and Mr. Heard, attorney for said plaintiff, appearing and making no objection, and there being no further appearance by any of the other of the said defendants, on motion of Mr. Otis, attorney for said trustees, it is hereby ordered and adjudged that the said Jacob S. Wetmore, Thomas Denney, and Thomas W. Pearsall, trustees, as in said petition alleged, be, and they are hereby, admitted as parties defendant in this action, with leave to defend the same and assert their right to the property in question by answer or otherwise, as they may deem best.

W. WILKIN,
District Judge.

Filed Oct. 9, 1875. A. Armstrong, clerk.

79 STATE OF MINNESOTA,
County of Ramsey:
District court, second judicial district.

JESSE P. FARLEY, RECEIVER,
vs.
C. A. DE GRAFF AND OTHERS.

Know all men by these presents, that we, Charles A. De Graff, Nicholas De Graff, and William Crooks, as principals, and Bruno Beaupre, William Lee, Patrick H. Kelly, Horace Thompson, John L. Merriam, E. P. Drake, and J. C. Burbank, as sureties, are held and firmly bound unto the said Jesse P. Farley, as receiver of the Saint Paul & Pacific Railroad Company and plaintiff in the above entitled action, in the penal sum of fifty thousand dollars, for the payment of which to the said Jesse P. Farley as such receiver, his successors or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents; as witness our hands and seals this fourth day of August, 1875.

The condition of this obligation is such that whereas the said Far-
80 ley, as such receiver, claims to be entitled to a certain quantity of railroad iron, to wit, one thousand tons now lying at Duluth, and seventeen hundred tons lying at Glyndon, in said State, and which said iron is also claimed by the said C. A. De Graff, Nicholas De Graff, and William Crooks, partners as De Graff and Company, and said action is commenced to determine, among other things, the title of said De Graff & Co., to said iron, and an injunction has been obtained in said action restraining the said De Graff & Co., and each of them, from selling, removing, or interfering with said iron; and whereas there is a lien upon one thousand tons of said iron at Duluth of sixteen thousand dollars for government duties thereon, and said iron is liable to be soon forfeited to the United States for the non-payment of the same; and whereas it is agreed that the present market value of said iron is fifty (50) dollars per ton, free of dut es; and whereas the said De Graff & Co. have an opportunity to sell and desire to sell said one thousand tons of said iron lying at Duluth as aforesaid for the sum of thirty-four thousand dollars, subject to said lein thereon of sixteen thousand dollars of duties as afore-
said; and whereas said iron is liable to rust and depreciate intrinsic-
81 ally and in market value, and the said De Graff & Co. have applied, upon due notice to the court, for an order to have the said iron sold for the benefit of all concerned, and the proceeds brought into court, and it has since been ascertained that said iron cannot be sold for cash; and whereas the said court has decided that if said injunction is allowed to stand as to such iron, a large increase in the bond as to such iron will be required; and whereas it has been agreed between the parties hereto that no amendments to the pleadings in said action, or the addition of other parties to the suit, or the transfer of the case to the United States circuit court, if all or any of the same should be done, or the right of said Farley to take this bond, shall ever be urged against the validity hereof; and whereas it has since been agreed by and between the said Jesse P. Farley and the said De Graff & Co. that said injunction may be dis'olved as to said one thousand tons at Duluth claimed by said De Graff & Co., and that said De Graff & Co may sell and dispose of the same as their own, and pass all the title which they and the said Farley, as such receiver, have in and to the same, upon condition that the said De Graff & Co. execute a satisfactory bond to said Farley for the payment to him, his successors or assigns, of the sum of thirty-

four thousand (34,000) dollars in case it is finally determined in
82 said action that said one thousand tons belongs to said Farley as such receiver:

Now, therefore, if said injunction shall be dissolved as to said one thousand tons of iron at Duluth claimed by said De Graff & Co., and said De Graff & Co. be permitted to sell and dispose of the same as their own, and it shall finally be decided in said action that said iron, or the right of possession thereof, belongs to said Farley, as such receiver, and the said De Graff & Co. shall thereupon pay to the said Farley, as such receiver, his successors or assigns, the said sum of thirty-four thousand dollars, then this obligation to be void; otherwise to be and remain in full force and effect.

This bond to be approved by the court, and the said arrangement for the sale of the iron as herein recited to be sanctioned and approved by the court, so far as relates to the action of said Farley therein, and such approval to be endorsed on this bond.

C. A. DE GRAFF. [SEAL.]
NICHOLAS DE GRAFF. [SEAL.]
WM. CROOKS. [SEAL.]
WILLIAM LEE. [SEAL.]
PATRICK H. KELLY. [SEAL.]
HORACE THOMPSON. [SEAL.]
JOHN L. MERRIAM. [SEAL.]
E. F. DRAKE. [SEAL.]
J. C. BURBANK. [SEAL.]

83 STATE OF MINNESOTA,
Ramsey County, ss:

On this 4th day of August, A. D. 1875, personally came before me, the undersigned, a notary public in and for said county, Charles A. De Graff, William Crooks, Nicholas De Graff, Bruno Beaupre, William Lee, Patrick H. Kelly, Horace Thompson, John L. Merriam, E. F. Drake, & J. C. Burbank, the signers and sealers of the foregoing instrument, and each acknowledged that he executed the same voluntarily for the uses and purposes therein set forth.

Witness my hand and official seal, on the day and year above stated.

[NOTARIAL SEAL.] E. F. LANE,
Notary Public.

STATE OF MINNESOTA,
Ramsey County, ss:

On this 4th day of August, A. D. 1875, personally came before the undersigned, a notary public in and for said county, Bruno Beaupre, William Lee, Patrick H. Kelly, Horace Thompson, John L. Merriam, E. F. Drake, and J. C. Burbank, sureties in the foregoing bond, and each, being first duly sworn, did dipose that he is a resident and
84 freeholder of this State, and worth the sum of fifty thousand dollars above debts, liabilities, and property exempt from levy and sale under execution.

B. BEAUPRE.
PATRICK KELLY.
JOHN L. MERRIAM.
E. F. DRAKE.
HORACE THOMPSON.
J. C. BURBANK.

Subscribed and sworn to before me, on this August 4th, 1875.

[NOTARIAL SEAL.] E. F. LANE,
Notary Public.

Ramsey County, Minnesota, district court, 2d district.

JESSE P. FARLEY, RECEIVER,
vs.
DE GRAFF & CO.

Bond and sureties and arrangement recited in said bond approved by me, Aug. 5th, 1875.

W. WILKIN,
Dist. Judge.

Filed Aug. 6th, 1875. A. Armstrong, clerk.

85 In the district court for the county of Ramsey, second judicial district, and State of Minnesota.

JESSE P. FARLEY, RECEIVER OF THE SAINT-Paul and Pacific Railroad Company,
vs.
CHARLES A. DE GRAFF, WILLIAM CROOKS, and Nicholas De Graff, partners as De Graff & Co., The Northern Pacific Railroad Company, The Superior and Mississippi Railroad Company, and B. S. Russell, & G. W. Cass, receiver of the Northern Pacific Railroad Company, & C. W. Mead, general manager of said Northern Pacific Railroad Company.

Know all men by these presents that we, W. H. Fisher, as principal, executing this bond for the plaintiff, and N. W. Kittson, as surety, both of St. Paul, in said county, are held and firmly bound to the defendants in the sum of ten thousand dollars; to the payment of which sum well and truly to be made we bind ourselves, our executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 22d day of June, A. D. 1875, at St. Paul, in said county.

Whereas the said plaintiff is about to apply to this court for a
86 temporary injunction enjoining and restraining the defendants, and each of them, from shipping, removing, selling, hypothecating, transporting, interfering, or intermeddling with 4,560 tons of iron rails now lying at Glyndon and Duluth, Minnesota, or any part thereof:

Now, therefore, if the plaintiff will pay the parties enjoined by such writ, or detained thereby, such damages as they or either or any of them may sustain by reason of the writ, if the court finally decide that the party was not entitled thereto, the above obligation shall be void, else of full force and virtue.

W. H. FISHER. [SEAL.]
N. W. KITTSON. [SEAL.]

Signed, sealed, and delivered in presence of—
I. V. D. HEARD.

STATE OF MINNESOTA,
County of Ramsey, ss:

On this 22d day of June, A. D. 1875, before me personally came W. H. Fisher and N. W. Kittson, known to me to be the person described, and who executed the foregoing bond, and each acknowledged that he executed the same; and the said N. W. Kittson says that he is worth

the sum of ten thousand dollars over and above his just dues, debts, and liabilities, and exclusive of his property exempt from execution.

W. H. FISHER.
N. W. KITTSON.

87 Acknowledged, sworn to, & subscribed before me, the said 22 day of June, A. D. 1875.

[SEAL.] I. V. D. HEARD,
Notary Public.

Filed June 22d, 1875. Albert Armstrong, clerk.

In the district court for the county of Ramsey, second judicial district, and State of Minnesota.

JESSE P. FARLEY, RECEIVER OF THE SAINT Paul and Pacific Railroad Company,
vs.
CHARLES A. DE GRAFF, WILLIAM CROOKS, and Nicholas De Graff, partners as De Graff & Co., The Northern Pacific Railroad Company, The Superior and Mississippi Railroad Company, B. S. Russell, & G. W. Cass, receiver of the Northern Pacific Railroad Company, & C. W. Mead, general manager of said Northern Pacific Railroad Company.

Know all men by these presents, that we, Jesse P. Farley, receiver of the St. Paul and Pacific Railroad Company, as principal, of Dubuque, Iowa, and N. W. Kittson & Jas. J. Hill, of the city of St.
88 Paul, in said county of Ramsey, as sureties, are held and firmly bound by the defendants in the above-entitled action in the penal sum of seventy-nine thousand dollars, to the payment of which sum well and truly to be made to the said defendants and their legal representatives we bind ourselves and our legal representatives, jointly and severally, firmly by these presents. Sealed with our seals and dated this eleventh day of August, A. D. 1875, at St. Paul, in said county.

Whereas an injunction has heretofore been granted in this court enjoining and restraining the said defendants, and each of them, from shipping, removing, selling, hypothecating, transferring, or interfering, or intermed'ling with 4,560 tons of iron rails now lying at Glyndon and Duluth, Minnesota, or any part thereof; and whereas said injunction is still in force and effect except as to one thousand tons of said iron, claimed by said De Graff & Co., at Duluth, aforesaid; and whereas the said court has ordered, as a condition for the continuance of said injunction, that the plaintiff execute to the defendants herein a bond in the sum of seventy-nine thousand dollars, in addition to the bonds for ten thousand dollars heretofore given by the plaintiff on the issuance of the
89 injunction:

Now, therefore, if the plaintiff will pay the parties enjoined by such injunction, or detained thereby, such damages as they, or either or any of them, may sustain by reason of such injunction, if the court finally decide that the party was not entitled thereto, the above obligation shall be void, else of full force and virtue.

J. P. FARLEY.	[SEAL.]
ST. PAUL AND P. R. R.	[SEAL.]
N. W. KITTSON.	[SEAL.]
JAS. J. HILL.	[SEAL.]

Signed, sealed, and delivered in presence of—
I. V. D. HEARD.

STATE OF MINNESOTA,
County of Ramsey, ss:

On this 11th day of August, A. D. 1875, before me personally appeared Jesse P. Farley, receiver of the St. Paul and Pacific Railroad Company, known to me as the principal who executed the foregoing bond, and he acknowledged to me that he executed the same.

[NOTARIAL SEAL.] I. V. D. HEARD,
Notary Public.

90 STATE OF MINNESOTA,
County of Ramsey, ss:

N. W. Kittson and J. J. Hill, known to me to be the persons described in and who executed the foregoing bond, came personally before me and acknowledged that they executed the same, and each, being duly sworn, says that he is a resident and freeholder of said county, and each worth the sum of eighty thousand dollars over and above his debts and liabilities, and exclusive of his property exempt from execution.

N. W. KITTSON.
JAS. J. HILL.

Acknowledged, sworn to, & subscribed before me, Aug. 17, 1875.

[NOTARIAL SEAL.] I. V. D. HEARD,
Notary Public.

Filed Aug. 23d, 1875. A. Armstrong, clerk.

In the district court for the second judicial district, county of Ramsey, and State of Minnesota.

JESSE P. FARLEY, RECEIVER OF THE SAINT Paul and Pacific Railroad Company,
vs.
CHARLES A. DE GRAFF, WILLIAM CROOKS, and Nicholas De Graff, partners as De
91 Graff & Co., The Northern Pacific Railroad Company, The Lake Superior and Mississippi Railroad Company, B. S. Russell, G. W. Cass, receiver of the Northern Pacific Railroad Company, C. W. Mead, general manager of said Northern Pacific Railroad Company, def'ts.

The State of Minnesota to the defendants above named, and each and every of them, their counsellors, attorneys, and agents, and all others acting in aid or assistance of them:

It appearing from the complaint herein, duly verified, and from the affidavit of W. H. Fisher, plaintiff's agent, that the plaintiff is entitled to the relief demanded in the complaint, and that such relief consists in part of restraining the defendants from the acts hereinafter recited, and that the plaintiff is entitled under the statute to this injunction, and the proper bond having been duly filed herein, and the judge of this court having duly allowed this writ and directed it to issue:

Now, therefore, you and each of you who are above enumerated are hereby strictly commanded and enjoined that you desist and refrain from selling, hypothecating, transferring, interfering, or inter-
92 med'ling with, shipping, or removing 4,560 tons of iron rails now

at Duluth and Glyndon, in the State of Minnesota, and which were shipped to Minnesota from Europe through the instrumentality of one W. G. Moorhead, or any part thereof, whether the same be in the United States custom-house or elsewhere (said rails being rails designed to be used on the St. Paul and Pacific Railroad), until this court shall have made further order thereupon.

Witness the Hon. W. Wilkin, judge of said court, and the seal thereof, at St. Paul, this 22d day of June, A. D. 1875.

{ SEAL DISTRICT } ALBERT ARMSTRONG, *Clerk.*
{ COURT, MINN. }

STATE OF MINNESOTA,
Ramsey County:

Jas. F. O'Brien, being duly sworn, says that on the 23d day of June, A. D. 1875, at St. Paul, Minnesota, he served the within injunction on the Lake Superior and Mississippi Railroad Company, one of the def'ts, by delivering to F. M. Davis, the secretary of said company, a true and correct copy thereof, and by exhibiting to him at the same time the original thereof, with the seal of the court thereon; and that at
93 the same time and place he served the said injunction upon the def'ts Charles A. De Graff, William Crooks, & Nicholas De Graff, partners as De Graff & Co., by delivering to William Crooks, one of the said firm, personally, a true and correct copy thereof, and by exhibiting to him at the same time the original thereof, with the seal of the court thereon; and that on the 24th day of June, A. D. 1875, at the said city of St. Paul and county, he served the said injunction upon def't C. W. Mead, general manager of the Northern Pacific Railroad Company, by delivering to him personally a true and correct copy thereof, and by exhibiting to him at the same time the original thereof, with the seal of the court thereon.

JAS. F. O'BRIEN.

Subscribed and sworn to, March 4th, 1876.
[NOTARIAL SEAL.] C. D. O'BRIEN,
Notary Public, Minn.

It is hereby stipulated that the within injunction was duly served on B. S. Russell, one of the within def'ts, prior to his answering herein. Feb. 29, 1876.

SMITH & EGAN,
Att'ys for Def't Russell.

Returned and filed March 6th, 1876. A. Armstrong, clerk.

94 In the district court for the second judicial district, county of Ramsey, State of Minnesota.

JESSE P. FARLEY, RECEIVER OF THE SAINT Paul and Pacific Railroad Company, plaintiff,
vs.
CHARLES A. DE GRAFF, WILLIAM CROOKS, and Nicholas De Graff, partners as De Graff & Co., The Northern Pacific Railroad Company, The Lake Superior and Mississippi Railroad Company, B. S. Russell, G. W. Cass, receiver of the Northern Pacific Railroad Company, and C. W. Mead, general manager of said Northern Pacific Railroad Company, defendants.

The State of Minnesota to the defendants above named, and each and every of them, their counsellors, attorneys, and agents, and all others acting in aid or assistance of them:

It appearing from the complaint herein, duly verified, and from the affidavit of W. H. Fisher, pl'ff's agent, that the plaintiff is entitled to the relief demanded in the complaint, and that such relief consists in part of restraining the defendants from the acts hereinafter recited, and that the plaintiff is entitled under the statute to this injunction, and the proper bond having been duly filed herein, and the judge of
95 this court having duly allowed this writ and directed it to issue:

Now, therefore, you and each of you who are above enumerated are hereby strictly commanded and enjoined that you disist and refrain from selling, hypothecating, transferring, interfering or intermed'ling with, shipping, or removing 4,560 tons of iron rails, now at Duluth and Glyndon, in the State of Minnesota, and which were shipped to Minnesota from Europe through the instrumentality of one G. W. Moorehead, or any part thereof, whether the same be in the United States custom-house or elsewhere (said rails being rails designed to be used on the St. Paul and Pacific Railroad), until this court shall have made further order thereupon.

Witness the Hon. W. Wilkin, judge of said court, and the seal thereof, at St. Paul, this 22d day of June, A. D. 1875.

{ SEAL OF DISTRICT COURT, MINN. } ALBERT ARMSTRONG, *Clerk.*

Returned and filed March 9, 1876. A. Armstrong.

96 District court, Ramsey County, 2d district.

J. P. FARLEY, RECEIVER, &C., *vs.* DE GRAFF & CO.

I object to reference of proposed issues to a jury, for the reason that no question excipt as a fraud should be so referred. See decision of this court in Austrian vs. Dean.

Nov. 9, 1875.

I. V. D. HEARD,
Att'y for Plaintiff.

Filed March 9th, 1876. A. Armstrong, clerk.

District court, 2d district, Minnesota.

J. P. FARLEY, RECEIVER, *vs.* DE GRAFF & CO.

The def'ts De Graff & Co. will make no claim against plaintiff for damages on ⅜ of injunction herein, so far as relates to 1,000 tons at Duluth. This is one of the conditions accompanying partial dissolution of injunction.

Aug. 5, 1875.

GILMAN, CLOUGH AND LANE,
Att'ys for De Graff and Co.

Filed March 6, 1876. A. Armstrong, clerk.

J. P. FARLEY, RECEIVER,
vs.
DE GRAFF & CO. ET ALS.

The defendants De Graff & Co. are hereby notified to produce on the trial of this action the following documents:

1. An order, dated in or about Dec. 27, 1872, from B. S. Russell to the agent of the St. Paul and Pacific R. R. Co. or H. T. Simpson, agent, to deliver the iron at or near Glyndon referred to in the complaint herein to said De Graff & Co., and all papers and documents in your possession or under your control relative to said iron or any portion of the iron mentioned in the complaint, whether emanating from said Russell or W. G. Moorhead, and the St. Paul and Pacific R. R. Co., or any of its officers, or from any other person, officer, or company.

2. All contracts between said De Graff & Co. or said 1st Div. Co. and said Moorhead relative to said iron, and particularly a certain contract, dated Nov. 11, 1872, purporting to be executed by W. G. Moorhead, as construction agent of the 1st Div. Co. of St. Paul & P., selling
98 the 2,700 tons in suit, together with the copy of the resolution and schedule accompanying the same.

Also, the agreement of said De Graff to sell said iron to *to* the said St. P. and P. R. R. Co., dated Dec. 27, 1872.

3. All bills of lading and all other papers and documents in your possession or under your control relative to said iron or any part thereof.

4. The three contracts entered into by De Graff & Co. with Moorhead for the construction of the roads referred to in the complaint, or parol evidence will be given of their contents.

Dated St. Paul, Dec. 2d, 1875.

I. V. D. HEARD,
Att'y for Pl'ff.

District court, 2d dist. Ramsey County.

JESSE P. FARLEY, RECEIVER, &C.,
vs.
DE GRAFF & CO., B. S. RUSSELL, ET ALS.

99 *Notice to produce.*

The def't B. S. Russell is hereby notified to produce on the trial of this action all papers, letters, documents, contracts, bills, bills of lading, and all evidences of title relating to the 1,860 tons of iron, the 2,700 tons of iron, and to any portion of the 3,400 tons of iron referred to in the complaint, and especially such as have been received from W. G. Moorhead, and especially the bills of lading for said iron, or any part thereof, and also especially any receipts, or other papers or documents, relative to any portion of said iron received from H. F. Simpson, agent of the St. P. & P. R. R. Co., or any agent or officer of said company, or parol evidence will be given of their contents. Dated at St. Paul, Dec. 2d, 1875.

I. V. D. HEARD,
Att'y for Plaintiff.

Messrs. SMITH and EGAN,
Att'y for Def't B. S. Russell.

Filed March 6th, 1876. A. Armstrong, clerk.

100 State of Minnesota, district court, 2d judicial district, Ramsey County.

JESSE P. FARLEY, RECEIVER OF THE PACIFIC Railroad Company,
vs.
CHAS. A. DE GRAFF ET ALS.
} Oct. 2d, 1875.

The application of Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall to be admitted parties plaintiff or coming on to be heard before me, at my chambers, this day at 11 o'clock a. m., pursuant to an order to show cause to that effect, and it appearing that said order has been duly served as therein provided, Mr. Clough appearing for the def'ts De Graff & Co., and no one appearing for the other def'ts or for said plaintiff, it is hereby ordered that the hearing on said application be continued until the next special term of this court.

Oct. 9, 1875.

W. WILKIN,
Dist. Judge.

In the district court for the county of Ramsey, second judicial district, and State of Minnesota.

101 JESSE P. FARLEY, RECEIVER OF THE St. Paul and Pacific Railroad Company,
vs.
CHARLES A. DE GRAFF ET ALS.

STATE OF MINNESOTA,
County of Ramsey, ss:

GEO. L. OTIS, being duly sworn, says that the above entitled action is now pending in this court; that on the 2d day of April, A. D. 1875, the requisite number of bondholders as prescribed by article eleven of the mortgage referred to in the complaint, and made one of the exhibits thereto, by their duly authorized attorneys in fact, met in the city of New York, and at such meeting duly fixed, prescribed, and established the necessary and proper regulations and by-laws in respect to the meetings of the holders of the bonds secured by the said mortgage or deed of trust, and also defined what should constitute a quorum.

That afterwards, at a meeting of such bondholders duly holden in said city of New York, on the 16th day of April, 1875, the trustees under said mortgage, viz, Horace Thompson, George L. Becker, and William G. Moorhead, under the authority conferred by the fourteenth article of said mortgage, were duly removed from office by a vote of a
102 majority in interest of the holders of said bonds, the said vote being had at a meeting of the bondholders duly holden and pursuant to the regulations established as aforesaid, and being duly attested by an instrument in writing under the hands and seals of the persons so voting; and that afterwards, at a meeting of such bondholders aforesaid duly holden in the city of New York, pursuant to the regulations prescribed as aforesaid, on the 20th day of April, 1875, by a majority in interest of said bondholders, there was duly appointed trustees in the place and stead Thompson, Becker, and Moorhead, Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, who thereupon became vested with and entitled to exercise any and all powers and authorities conferred upon the trustees under and by virtue of the provisions contained

in said mortgage or deed of trust, and that they have duly accepted said trust and are now the duly chosen and qualified and acting trustees under said mortgage or deed of trust; and that deponent is an attorney and counsellor of this court, and is the attorney at law and counsellor for said trustees last referred to, and duly authorized to enter their appearance in any action instituted in this State wherein their interests as such trustees is involved, or to commence any such action.

103 Deponent further says that the interests and rights of said trustees are involved in the above-entitled action, as appears from the pleadings in said action, and he is desirous that he may be allowed to enter the appearance of said trustees therein, and a reasonable time allowed them to plead to the complaint, by asking counter-relief or otherwise, as said trustees may desire, or to appear as copl'ffs. Wherefore he prays an order to show cause why the same should not be allowed.

GEO. L. OTIS.

Sworn and subscribed Sept. 29, 1875.

{ NOTARIAL SEAL, } FRANK MIX,
{ RAMSEY CO., MINN. } *Notary Public, Ramsey Co., Minn.*

To I. V. D. Heard, attorney for plaintiff; Smith and Egan, attorney for Russell; Gilman, Clough and Lane, attorneys for De Graff & Co.; Geo. Grey, esq., att'y for Northern Pacific R. R. Co.:

GENTLEMEN: Take notice that on the hearing of the order to
104 show cause herein the foregoing affidavit and all the files of this case will be used.

Respectfully,

GEO. L. OTIS,
Attorney for Wetmore, Denny, and Pearsall, Trustees.

SEPT. 19, 1875.

On reading the foregoing affidavit and the pleadings in the above entitled action:

Ordered that the pl'ff and def'ts in said action show cause before me, at my chambers in St. Paul, on the second day of Oct., 1875, at 11 o'clock a. m., why Jacob S. Wetmore, Thomas Denny, and Thomas W. Pearsall, trustees as set forth in said affidavit, should not be made parties to said action, either as copl'fs or def'ts, and be allowed a reasonable time to make or interpose their pleadings therein, and that a copy of said affidavit and this order be forthwith served upon the attorneys for the parties in said suit.

W. WILKIN,
Judge 2d Dist.

SEPT. 29, 1875.

105 STATE OF MINNESOTA,
County of Ramsey, ss:

Chas. E. Otis, of said county, being duly sworn, says that at the city of Saint Paul, in said county, on the 30th day of September, 1875, he duly served the within order to show cause and affidavit upon Geo. Grey, esq., the attorney for the within named defendant the Northern Pacific Railroad Company, by leaving the same between the hours of six in the morning and nine in the evening, in a conspicuous place in the office of the said Geo. Gray, esq., in said city of St. Paul, said Gray

being at the time absent from his office, and there being no clerk therein or other person having charge thereof.

CHAS. E. OTIS.

Subscribed and sworn to, Oct. 2d, 1875, before me.
[NOTARIAL SEAL, MINN.]

E. F. LANE,
Notary Public, Minn.

Filed Oct. 9, 1875. A. Armstrong, clerk.

106 State of Minnesota, Ramsey County, district court.

JESSE P. FARLEY, AS RECEIVER & COPLAINTIFF, *ag's't*
C. A. DE GRAFF AND OTHERS, DEFENDANTS.

Please take notice that on behalf of the defendants in the above entitled action, C. A. De Graff, William Crooks, and Nicholas De Graff, we shall move the court, at the chambers of the Hon. Wescott Wilkin, judge thereof, at 10 o'clock a. m., on Aug. 21, A. D. 1875, that the injunction heretofore granted in said action against the said defendants be as to them and each of them vacated and set aside. Said motion will be made on the complaint of the plaintiff and on the answer of the defendants C. A. De Graff, William Crooks, and Nicholas De Graff.

Dated Aug. 9, 1875.

GILMAN, CLOUGH AND LANE, AND
C. K. DAVIS,
Att'ys for Def'ts.
C. A. DE GRAFF.
WM. CROOKS.
NICHOLAS DE GRAFF.

To I. V. D. HEARD, Esq.,
Att'y for Pl'ff.

Filed March 6, 1876. A. Armstrong, clerk.

107 State of Minnesota, Ramsey County district court.

JESSE P. FARLEY
vs.
C. A. DE GRAFF ET AL.

SIR: Please take notice that we will, at a special term of said court to be held on the 11th day of September, 1875, at the court-house in said county, move the court, upon the pleadings in the above entitled action, on behalf of defendants De Graff & Co., for an order of said court directing that the specific questions of fact involved in said action, numbered 1 to 15, inclusive, in the statement hereto annexed, be submitted to a jury of said court and tried by the same; that the said statement hereto annexed contains the questions of fact which defendants De Graff & Co. will ask to have submitted to the jury for trial, and to be incorporated in the order above mentioned.

Dated St. Paul, July 28, 1875.

Yours, &c.,

GILMAN, CLOUGH AND LANE, AND
C. K. DAVIS,
Att'ys for Def'ts De Graff & Co.

To I. V. D. HEARD, Esq.,
Att'y for Pl'ff.

JESSE P. FARLEY
vs.
C. A. DE GRAFF ET AL.

Questions of fact to be submitted to and answered by a jury of said court to be impanneled to try the same:

1st. Was the contract alleged in the pleadings to have been made by and between the First Division of the St. Paul and Pacific Railroad Company of the first part and William G. Moorhead of the other part, whereby he, the said Moorhead, undertook and agreed to construct the extension lines (so called) of the St. Paul and Pacific Railroad, entered into with a view on the part either of the said Moorhead or of the said railroad company, or of the officers thereof, to in any manner divert or misapply any part of the moneys arising from the sale of the $15,000,000 issue of bonds mentioned in the pleadings from the purpose for which the said bonds were issued?

2d. Was the said contract entered into by and between the said railroad company and the said Moorhead with any improper or un-
109 lawful interest or purpose on the part of either the said railroad company or the officers thereof and the said Moorhead?

3d. Was the said contract made for the purpose of advancing and protecting the interests of those who should thereafter become holders of the said bonds?

4th. Did the said railroad company make the payments to the said Moorhead which it agreed to make by the terms of the said contract with him? If the said company failed to make such payments, where did such failure occur? How much remained due and unpaid from the said company to the said Moorhead for work done and materials furnished in the construction of said extension lines at the final stoppage of the work of the construction, in Oct., 1872?

5th. Has anything ever been paid to the said Moorhead by the said railroad company for work done or materials furnished in the construction of said extension lines of railroad during the months of July, August, and September, A. D. 1872, except in so far as he, the said Moorhead, has reembursed himself therefor out of the proceeds of such portions of the iron purchased by him for use in the construction of said extension lines as were sold or hypothecated by him for that purpose?

110 6th. Did the failure on the part of the said railroad company to pay for the work done and materials furnished in the construction of the said extension lines of railroad after the month of June, A. D. 1872, and during the months of July, August, and September, A. D. 1872, result from a total inability on the part of the said railroad company to procure any funds for such purpose?

7th. Did the inability on the part of said company to procure funds with which to pay for the work done or materials furnished upon the said extension lines of railroad after the month of May, A. D. 1872, result from Messrs. Lippman, Rosenthal & Co., mentioned in the answer, having in their possession upwards of $4,000,000 of the said $15,000,000 issue of bonds which they failed and refused either to sell or to surrender to the said First Division Company or trustees in the mortgage made to secure the same?

8th. If all said bonds had been negotiated would there have been produced sufficient funds with which to complete the said extension

lines of railroad in the manner and within the time required by law?

111 9th. Did the officers and directors of the said railroad company, and the trustees in the mortgage mentioned in the pleadings made to secure the payment of the said bonds, at and after the time when the said railroad company failed and became unable to procure funds with which to pay for further work done and materials furnished in the construction of the said lines, urge the said Moorhead to cause the work of the construction of said lines to continue, and acquiesce in and assent to the disposal by the said Moorhead of so much of the said iron as might be needed to procure means with which to pay for further work upon said lines?

10. Was the said Moorhead induced to cause the work of the construction of the said lines to continue after the failure and inability on the part of said railroad company to procure funds to pay for any further of such work by the fact of his having the said iron at his disposal to procure means with which to pay for such work?

11. If the work of construction had been stopped upon the said lines upon the failure of the said company to procure funds with which to pay for any further work thereon, could or would any more of the said

112 lines of railroad have been completed than were completed at the time of such failure?

12. Was the sale of the 2,700 tons of iron which was made by the said Moorhead to De Graff & Co., and which is mentioned in the pleadings made by the said Moorhead, with the knowledge and assent of the said railroad company, and of the officers thereof, and of the trustees in the said mortgage?

13. Has the said sale of the said 2,700 tons of iron by the said Moorhead to the said De Graff and Co., since the same was made, been assented to, acquiesced in, and ratified by the said railroad company, and by the officers thereof, and by the trustees in the said mortgage?

14th. Have the facts concerning the said sale by the said Moorhead to De Graff & Co. of the said 2,700 tons of iron since the same was made come to the knowledge of the holders of the bonds of the said $15,000,000 issue, through their properly authorized agents, and have the holders of said bonds since the said sale of the said iron, with the knowledge of the facts concerning the said sale, by their duly authorized agents, acquiesced in, assented to, and ratified the said sale?

113 15. Were the said 2,700 tons of iron sold by the said Moorhead to the said De Graff & Co. at and before the time of such sale the property of said Moorhead?

Filed March 6, 1876. A. Armstrong, clerk.

State of Minnesota, Ramsey County district court.

JESSE P. FARLEY
vs.
B. S. RUSSELL AND OTHERS.

STATE OF MINNESOTA,
Ramsey County, ss:

Wm. H. Fisher, being first duly sworn, says that he is the agent and attorney in fact of J. P. Farley, esq., plaintiff herein, and has been such since October 8, 1873.

Deponent further says that on or about the 4th day of April, A. D. 1875, the plaintiff received a letter from said B. S. Russell, one of

114 the defendants in the above entitled action, which letter was written by said Russell in answer to certain verbal inquiries made by deponent to the son of said Russell, at Duluth, in said State, on or about the 23d day of March, 1875, a copy of which letter is as follows:

"LAKE SUPERIOR AND MISSISSIPPI RAILROAD CO.,
"*Philadelphia, Ap'l 1st*, 1875.

"J. P. FARLEY, Esq., *Receiver*,
"*2220 Saint Paul:*

"DEAR SIR: In reply to your inquiry, at Duluth, as to the am't it will cost to redeem the iron on Rice's Point, at Duluth, I would say that the iron is held as collateral security, at a price which I think is more than it will bring now; but if you will make an offer for it, I will communicate with the parties here and New York and will let you know.

"Address me here, care of E. W. Clark & Co.

"Yours, truly,
(Signed) "B. S. RUSSELL."

Deponent further says that, on the 24th day of July, 1875, after receiving the answer of the defendant Russell in the above action, in which he sets up the claim of the United States to a portion of
115 the iron in controversy, said deponent wrote to said plaintiff's attorney at Washington, W. T. Steeger, esq., to communicate with the Secretary of the Navy and ascertain the facts relative to said iron and the claim of the United States thereto, so that said plaintiff might understandingly prosecute said suit, and no reply to said letter has yet been received. Deponent further says that the first intimation or knowledge the plaintiff had of any claim by the United States to said iron, or that the United States had any claim whatever therein, except for duties, was upon the receipt of said Russell's answer in said action which sets up said claim.

W. H. FISHER.

Subscribed and sworn to July 27, 1875.

{ NOTARIAL SEAL, RAMSEY CO., MINN. } JAS. F. O'BRIEN, *Notary Public, Minn.*

Filed March 9, 1876. A. Armstrong, clerk.

116 District court, 2d district.

STATE OF MINNESOTA,
Ramsey County:

JESSE P. FARLEY, RECEIVER,
vs.
CHARLES A. DE GRAFF, WILLIAM CROOKS, Nicholas De Graff, partners as De Graff & Co., B. S. Russell, et als.

You are hereby notified that on Monday, the 23d of August, 1875, at 11 o'clock a. m., at the chambers of the judge of this court, in St. Paul, in said county, the plaintiff will apply to said judge to have approved and file in said court the additional bond ordered to be filed on the in-

junction herein for $79,000, N. W. Kittson and Jas. J. Hill being sureties.

Dated St. Paul, Aug. 21, 1875.

I. V. D. HEARD,
Att'y for Pl'ff.

To GILMAN, CLOUGH AND LANE,
Att'ys for Def'ts De Graff & Co.,
& SMITH AND EGAN,
Att'ys for Def'ts B. S. Russell et als.

Filed Aug. 23d, 1875. Albert Armstrong, clerk.

117 Dist. court, 2d district.

JESSE P. FARLEY, RECEIVER, &C.,
vs.
CHARLES A. DE GRAFF ET ALS.

The defendants G. W. Cass, receiver, &c., & the Northern Pacific R. R. Co. never having served with process in the action or appearance therein, the suit as to Cass & Northern Pacific R. R. Co. is dismissed.

March 1st, 1876.

I. V. D. HEARD,
Att'y for Pl'ff.

Filed March 1, 1876. A. Armstrong.

State of Minnesota, Ramsey County district court.

JESSE P. FARLEY
vs.
C. A. DE GRAFF & OTHERS.

Upon reading the affidavit of Wm. Crooks in this action, and
118 on motion of counsel for De Graff & Co., it is ordered that said plaintiff show cause before me, at the old court-house in St. Paul, on the 24th day of July, 1875, at 10 o'clock a. m., why an order as prayed for in said affidavit should not be made on said action, and that a copy of this order and of said affidavit be served forthwith upon the plaintiff's counsel, I. V. D. Heard, esq., in said cause.

Dated this 22 day of July, 1875.

W. WILKIN,
Dist. Judge.

State of Minnesota, Ramsey County district court.

JESSE P. FARLEY
vs.
C. A. DE GRAFF AND OTHERS.

STATE OF MINNESOTA,
Ramsey County, ss:

WILLIAM CROOKS, being first duly sworn, says he is one of the defendants in the above entitled action, and is a member of the firm of De Graff & Co.; that the twenty-seven hundred (2,700) tons of iron rails mentioned in the complaint in said action as being claimed by the firm of De
119 Graff & Co. has been in the possession of the said De Graff & Co. ever since December, 1872; that owing to the financial depression existing throughout the count'y since the year 1873, and the consequent stagnation in the business of railway construction, there has been no

market for said iron and no chance to sell or dispose of the same at the fair value thereof, without very great pecuniary sacrifice, until the present time; that the said De Graff and Co. have kept the said iron solely on account of the utter want of a market for the same; that immense stocks of iron rails are on hand throughout the country, which increases the difficulty of finding a market for iron in any particular case; that the present tendency of the market price of iron is downward, and that the price thereof will in all probability become and remain lower than at the present time for a very considerable period of time in the future; that the said iron is worth nearly or quite fifty (50) dollars per ton; that an opportunity to sell the whole of the said iron at the fair market value thereof now exists; that if such opportunity to sell said iron is lost there will not in all probability be another opportunity to sell the same, or any considerable part thereof, at an adequate price for the same, or without great loss, for years in the future; that for these reasons, if the opportunity now presented for the sale of said iron is suffered
120 to pass, the entire value of said iron will be practically gone, and it will amount to practically the entire loss thereof; that the security given by the plaintiff upon the issuance of the injunction in this action restraining the said De Graff & Co. from selling the said iron is wholly inadequate to secure them against loss by reason of being so restrained, and that security in a less sum than the value of said iron would not be sufficient to protect them against the loss that might result to them from a loss of the present opportunity to sell said iron hereinbefore mentioned; that when said 2,700 tons of railroad iron was purchased by said De Graff and Co. a part of the same was in bond, and subject to an import duty to the U. S. Government of $13,860.00, gold, and that on or about May 14th, 1875, the said De Graff & Co. borrowed $5,793.00 in gold of the 1st National Bank of St. Paul to pay duties upon $418\frac{031}{1000}$ tons of said iron, and that again, on June 21, 1875, or about that time, the said De Graff and Co. borrowed $3,387.88 in gold of the said 1st National Bank of St. Paul to pay duties on other portions of said iron, and have paid up to this time to the U. S. Government for duties upon said iron the sum of $9,180.88 in gold, and have arranged to pay in August next the further sum and balance due the government,
121 to wit, $4,679.12; that said money was borrowed from the bank by an arrangement entered into by and between the bank and the defendant De Graff & Co. prior to the issuing of the injunction before mentioned, and upon the pledge of said iron to said bank for the repayment of said money so borrowed, with interest thereon at 12 per cent. per annum.

Wherefore deponent prays for an order of this court authorising the sale of said iron at the present time, while there is a demand for and an opportunity to sell the same, subject to the approval of this court, and that out of the proceeds the said 1st National Bank of St. Paul, Minnesota, be repaid for its advances to pay the duties thereon, with interest, and that the balance of said proceeds be paid into court, to abide the final determination of this suit, and the said plaintiff be required to give additional security to indemnify said De Graff & Co. against loss or damage on account of said injunction.

WM. CROOKS.

Subscribed and sworn to before me, this 20th day of July, A. D. 1875.

{ NOTARIAL SEAL, } E. F. LANE,
{ RAMSEY CO., MINN. } *Notary Public.*

Filed March 6, 1876. A. Armstrong, clerk.

STATE OF MINNESOTA,
County of Ramsey:

JESSE P. FARLEY, RECEIVER, &c.,
against
CHARLES A. DE GRAFF AND OTHERS.

The defendant C. W. Mead demurs to the complaint herein for the ground that it appears upon the face of the complaint that the complaint does not state facts sufficient to constitute a cause of action.

GEO. GRAY,
Attorney for Defendant C. W. Mead.

Filed March 6, 1876. A. Armstrong, clerk.

State of Minnesota, district court, 2d district, Ramsey County.

JESSE P. FARLEY, RECEIVER OF THE ST. PAUL and Pacific Railroad Company,
vs.
CHARLES A. DE GRAFF ET AL.

And now comes the Lake Superior and Mississippi Railroad Company, one of the defendants in the action above-entitled, and de-
123 murs to the complaint of the plaintiff, and for cause of demurrer alleges that said complaint does not state facts sufficient to constitute a cause of action or any relief whatever against the defendant, wherefore the defendant prays for judgment.

JAMES SMITH, JR.,
Attorney for Lake Superior and Miss'pi R'd Co.

Filed March 6, 1876. A. Armstrong, clerk.

State of Minnesota, Ramsey County district court, 2d judicial district.

JESSE P. FARLEY, RECEIVER OF THE SAINT Paul and Pacific Railroad Company, plaintiff
vs.
CHARLES A. DE GRAFF, WILLIAM CROOKS, and Nicholas De Graff, partners, as De Graff and Co., The Lake Superior and Mississippi Railroad Company, B. S. Russell, C. W. Mead, general manager of the Northern Pacific Railroad Company, Jacob S. Wetmore, Thomas W. Pearsall, and Thomas Denny, trustees, &c., defendants.

124 To the hon. the judge of said district court:

Your petitioner, Jesse P. Farley, receiver of the St. Paul and Pacific Railroad Company, plaintiff in the above-entitled action, respectfully represents that your petitioner is, and was prior to the commencement of this action, and ever since, a citizen of the State of Iowa, and that the def'ts Charles A. De Graff, William Crooks, B. S. Russell, and C. W. Mead, general manager of the Northern Pacific Railroad Com-

pany, are, and at the commencement of this action were, and ever since have been, citizens of the State of Minnesota. That the def't Nicholas De Graff departed this life since the commencement of this action, but that the said Nicholas De Graff from a time prior to the commencement of this action until his decease was a citizen of the State of Minnesota. That the defendant Jacob S. Wetmore now is, and ever since a time prior to the commencement of this action has been, a citizen of the State of New Jersey; and that the defendants Thomas W. Pearsall and Thomas Denny now are, and ever since a time prior to the commencement of this action have been, citizens of the State of New York; and that the def't the Lake Superior and Mississippi Railroad Company now is, and ever since a time prior to the commencement of this
125 action has been, a citizen of the State of Minnesota.

That the matter in dispute in said action exceeds, exclusive of costs, the sum of five hundred dollars; that said action is of a civil nature, in equity.

That the said suit was commenced since the last term of this court, and has not yet been tried, and that the present term of this court is the term at which said cause would be first tried, and that the said action is duly pending in said court against all of the defendants.

Wherefore your petitioner desires and prays that said suit should be removed to the circuit court of the United States for the district of Minnesota.

J. P. FARLEY.

STATE OF MINNESOTA,
County of Ramsey, ss:

Jesse P. Farley, being duly sworn, says that he is the plaintiff above named and receiver of the Saint Paul and Pacific Railroad Company above named.

That he has read the foregoing petition and knows the same is true, except as to matters therein stated upon information and belief, and as to those matters he believes it to be true.

J. P. FARLEY.

126 Subscribed and sworn to before me, February 29, 1876.
[NOTARIAL SEAL.] JAS. F. O'BRIEN,
Notary Public, Minn.

Filed March 1, 1876. A. Armstrong, clerk.

District court, 2d judicial district.

STATE OF MINNESOTA,
Ramsey County:

JESSE P. FARLEY, OF THE SAINT PAUL AND Pacific Railroad Company, pl'ff,
vs.
CHARLES A. DE GRAFF & OTHERS.

The plaintiff having filed the necessary petition and bond herein, in open court upon the above action being called for hearing, and after hearing I. V. D. Heard in support of the motion, and W. P. Clough, esq., for De Graff & Co., in opposition thereto, and on reading the consent of attorneys for various defendants endorsed upon said petition,

it is hereby ordered that said suit, with a copy of all records, bonds, and documents and files therein, be removed to the United States circuit court for the district of Minnesota, and that this court pro-
127 ceed no further in said suit.

W. WILKIN,
District Judge.

Dated St. Paul, March 1, 1876.

Filed March 9, 1876. A. Armstrong, clerk.

District court, 2d judicial district.

STATE OF MINNESOTA,
County of Ramsey:

Know all men by these presents, that we, Jesse P. Farley, receiver of the St. Paul and Pacific Railroad Company, of Dubuque, in the State of Iowa, as principal, and Norman W. Kittson and I. V. D. Heard, of Saint Paul, Minnesota, are held and firmly bound unto Charles A. De Graff and William Crooks, surviving partners of De Graff & Co., the Lake Superior & Mississippi Railroad Company, B. S. Russell, C. W. Mead, general manager of the Northern Pacific Railroad Company, and Jacob S. Wetmore, Thomas W. Pearsall, and Thomas Denny, trustees, &c., in the sum of five hundred dollars, lawful money of the United States, to be paid to the said defendants, their legal representatives or assigns, for which payment well and truly to be made we, jointly and severally, bind ourselves and our legal representatives firmly by these presents.

128 The condition of the above obligation such that whereas an action of a civil nature has been commenced and is now pending in said district court for the second judicial district, county of Ramsey, and State of Minnesota, wherein the said Jesse P. Farley, receiver as aforesaid, a citizen of the State of Iowa, is plaintiff, and the said def'ts, citizens of different States from the pl'ff, are def'ts, which said action plaintiff desires and is about to remove from said district court to the circuit court of the United States for the district of Minnesota, pursuant to the act of Congress in such case made and provided:

Now, therefore, if the said Jesse P. Farley, receiver as aforesaid, pl'ff, shall duly enter in said circuit court for the district of Minnesota on the first day of its next session a copy of the record in such suit, and of all papers and proceedings on file and heretofore had in said action, and shall pay all costs that may be awarded by said circuit court if said court shall hold that said suit was wrongfully or improperly removed thereto, and shall there appear & enter special bail in said suit if special bail was originally requisite thereon, and shall do and perform all other acts necessary and requisite in the premises, then this obligation shall be null and void, else of full force.

In testimony whereof we have hereunto set our hands and seals
129 this twenty-ninth day of February, A. D. 1876.

J. P. FARLEY. [SEAL.]
NORMAN KITTSON. [SEAL.]
I. V. D. HEARD. [SEAL.]

Signed, sealed, and delivered in presents of—
N. W. KITTSON,
JAS. F. O'BRIEN.

STATE OF MINNESOTA,
Ramsey County, ss:

On this 29 day of February, A. D. 1876, before me personally came J. P. Farley, Norman W. Kittson, & I. V. D. Heard, to me known to be the same persons described in and *and* who executed the foregoing bond, and they each acknowledged to me that they executed the same for the uses & purports therein mentioned.

{ NOTARIAL SEAL, RAMSEY CO., MINN. }

JAS. F. O'BRIEN,
Notary Public, Minn.

STATE OF MINNESOTA,
Ramsey County, ss:

Norman W. Kittson and I. V. D. Heard, being duly sworn, doth say, each for himself, that he is one of the sureties in the foregoing bond, that he is a resident and freeholder of the State of Minnesota,
130 and worth the sum of five hundred dollars over and above his debts and liabilities, and exclusive of his property exempt from execution.

NORMAN W. KITTSON.
I. V. D. HEARD.

Subscribed and sworn to Feb. 29, 1876.
[NOTARIAL SEAL.]

JAS. F. O'BRIEN,
Notary Public, Minn.

Filed March 1, 1876. A. Armstrong, clerk.

131 *Exhibit A, referred to in foregoing complaint.*

Articles of agreement made the first day of April, in the year of our Lord one thousand eight hundred and seventy-one, by and between the First Division of the Saint Paul and Pacific Railroad Company, a corporation of the State of Minnesota, of the first part, and the Saint Paul and Pacific Railroad Company, a corporation of the same State, of the second part:

Witnesseth, that the said parties of the first and second parts have promised and agreed, and by these presents do covenant, promise, and agree, to and with each other as follows, to wit:

I. The said party of the first part has agreed, and does hereby agree, to assume and undertake to construct the lines of railroad which the said party of the second part is by law authorized to construct, maintain, and operate in said State of Minnesota, from some point at or near St. Cloud, county of Stearns, to St. Vincent, in the county of Pembina, being a distance of two hundred and ninety-three (293) miles, more or less, and from Watab, in the county of Benton, to Brainerd, in the county of Crow Wing, a distance of fifty-five (55) miles, more or
132 less; and to complete, equip, and put the same and every part thereof in good running order and condition within the time and in the manner required by the acts of Congress granting lands to the Territory and State of Minnesota to aid in the construction of said railroads, to wit, an act of the said Congress entitled "An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of certain railroads in said State," approved March 3d, 1857, and a certain other act thereof entitled "An act extending the

time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes," approved March 3d, 1865, and a certain other act thereof entitled "An act authorizing the Saint Paul and Pacific Railroad Company to change its lines, in consideration of a relinquishment of lands," approved March 3d, 1871, and the acts of the legislature of the State of Minnesota executing the trust created by said acts of Congress, or in relation to the disposition of lands therein mentioned, to wit, an act of the said legislature entitled "An act to facilitate the construction of the Minnesota & Pacific Railroad, and to amend and continue the act of incorporation relating thereto," approved March 10th, 1862, and acts
133 amendatory thereof, or relating to the railroad therein described, approved respectively February 6th, 1864, March 4th, 1864, and March 2d, 1865, or such other acts as shall or may hereafter be passed by the said Congress and the said legislature respectively, so that the said party of the second part shall and may become vested under the said acts with the legal title to all and singular the lands thereby granted to aid in the construction of the said railroads, or either of them; that is to say, the said party of the first part shall and will, within the time aforesaid, and so as to perfect the title of the said party of the second part to the said lands, construct and grade the said railroads in sections of ten miles; lay the same with iron rails, as required by law, with all necessary switches, side tracks, and turnouts; erect and build upon and in connection therewith all necessary bridges, viaducts, culverts, fences, and other structures, and all depots, stations, station-houses, car-houses, engine-houses, freight-houses, wood-houses, machine and other shops, and put upon and appropriate to the use of the said railroads, free from all incumbrances, except the deed of trust or mortgage hereinafter mentioned, all locomotives, tenders, passenger, baggage, freight, and other cars and other rolling stock which
134 may be necessary and proper to accom'odate the business thereof, and in all respects construct, complete, furnish, and equip the said railroads so that the same shall be in respect to the road-bed, rails, and superstructure thereof, and so far as the business may require in respect to the equipment thereof, and the facilities in the transaction of business, in good order and condition, and equal in all respects to the railroad heretofore constructed by the said party of the first part between Saint Paul and Watab; and the said party of the first part undertakes such con-truction and equipment of said railroads on the following terms and conditions, that is to say:

The said party of the first part shall execute, issue, and offer for sale and negotiation a series of bonds, amounting in the aggregate to fifteen millions of dollars, and consisting of fifteen thousand bonds of one thousand dollars each, and bearing date the first day of April, in the year one thousand eight hundred and seventy-one, and payable on the first day of January, in the year one thousand nine hundred and one, in lawful money of the United States in the city of New York, or in British pounds sterling in the city of London, at the rate of four British shillings per dollar, at the option of the holder, and bearing in-
135 terest at the rate of seven per centum per annum, payable semi-annually in the lawful money of the United States if demanded in New York, or in British pounds sterling if demanded in London aforesaid, at the option of the holder of coupons presenting the same; and the said party of the second part shall and will, for the benefit of the parties who may become holders of the said bonds, assume and secure the payment thereof by the execution and delivery to trustees of

a deed of trust or mortgage of and upon all and singular the said railroads so to be constructed, with their respective equipments, appurtenances, and franchises, and also of and upon all right, title, and interest now held and hereinafter to be acquired by the said party of the second part in and to the lands granted, or to be granted, by Congress as aforesaid to aid in the construction of said railroads, or either of them, which deed of trust or mortgage shall be in the most approved form for the purpose of securing the payment of said bonds and all interest to accrue thereon; and, subject to the said deed of trust or mortgage, but not otherwise, the said party of the second part shall execute and deliver to the said party of the first part, and the said party of the first part shall receive and accept, a lease of said railroads for the term
136 of ninety nine years, the said party of the first part agreeing to operate, maintain, and supply, from time to time, with all necessary and proper equipment, the said railroads, and to apply, semi-annually, any and all net earnings and income of the said railroads to the payment, as the same shall fall due, of the interest on said bonds, and if in any year, after paying in full out of the net earnings all interest on said bonds which shall have become due, a balance of the said net earnings shall remain, to pay over the same to the trustees for the time being, under the deed of trust or mortgage aforesaid securing the payment of said bonds, to be by the said trustees used and applied in the payment of the interest on said bonds, and the redemption of the principal thereof, in the manner provided in said deed of trust or mortgage in reference to the net proceeds of the sales of the lands granted by Congress to aid in the construction of said railroads therein mentioned; provided, however, that when all the bonds aforesaid shall have been fully paid and satisfied, principal as well as interest, or due provision made in money for the payment thereof, then and from henceforth all net earnings of the said railroads, or either of them, remaining in any year, after paying the expenses of operating and maintaining the
137 said railroads during such year and carrying on the business thereof, shall, within a reasonable time after the close of such year, be paid over to the party of the second part, to an amount equal, so far as net earnings may suffice, to a dividend of six per centum upon the whole aggregate amount of the capital stock of the said party of the second part now issued and outstanding.

II. The said party of the second part agrees to suffer and permit the said party of the first part to enter into and upon the said railroads for the purpose of constructing, completing, and equip'ing the same, as aforesaid, and for that purpose to exercise all the rights, privileges, and franchises of the said party of the second part in respect thereto; and the said party of the second part promises and agrees to execute upon said railroads, and upon its title and interest in the lands granted, or to be granted, by Congress, as aforesaid, a deed of trust or mortgage, as aforesaid, and subject to such deed of trust or mortgage, and to all and singular the provisions and requirements thereof, to lease the said railroads to the said party of the first part, and suffer and permit the said party of the first part to operate, maintain, and enjoy the said railroads for and during the said term of
138 ninety-nine years, applying the net earnings or income thereof as hereinbefore stated.

In witness whereof the said parties of the first and second parts have caused their respective corporate seals to be hereunto affixed, and the same to be attested by the signatures of their respective presidents and secretaries, the day and year first above written.

Exhibit B, referred to in the foregoing complaint.

This indenture, made the first day of April, in the year of our Lord one thousand eight hundred and seventy-one, between the St. Paul and Pacific Railroad Company, a corporation of the State of Minnesota, of the first part, and Horace Thompson and George L. Becker, of Saint Paul, in said State, and William G. Moorhead, of Philadelphia, in the State of Pennsylvania, of the second part:

Whereas the said Saint Paul and Pacific Railroad Company is a corporation of the State of Minnesota, duly created and organized under the laws thereof, and particularly under a certain act of the legislature of said State entitled "An act to facilitate the construction of
139 the Minnesota and Pacific Railroad, and to amend and continue the act of incorporation relating thereto," approved March 10th, 1862, and acts amendatory thereof or relating to the railroad therein described, approved respectively February 6th, 1864, March 4th, 1864, and March 2d, 1865.

And whereas the said company is duly authorized and empowered by law to construct, maintain, and operate the railroads in the said State of Minnesota hereinafter mentioned and described as the branch lines of the Saint Paul and Pacific Railroad, to be constructed from Saint Cloud to Saint Vincent, and from Watab to Brainerd, in said State, and for the construction, maintenance, and equipment thereof to borrow money and enter into any and all agreements and assume any and all liabilities which it may deem proper, and particularly to execute, acknowledge, and deliver a deed of trust or mortgage upon the said branch lines of railroads and the land grants connected therewith, in the manner and form of this indenture.

And whereas the Congress of the United States, heretofore, to wit, by a certain act thereof, entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the
140 construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama to aid in the construction of certain railroads in said State," approved March 3d, 1857, and by a certain other act thereof entitled "An act extending the time for the completion of certain land-grant railroads in the State of Minnesota and Iowa, and for other purposes," approved March 3d, 1865, granted to the said State of Minnesota certain lands for the purpose of aiding in the construction of railroads from Saint Cloud aforesaid, by way of Crow Wing, to Saint Vincent aforesaid, and also from Saint Cloud to the waters of Lake Superior.

And whereas the said State of Minnesota, by the legislative acts thereof aforesaid, granted the said lands applicable to the construction of said railroads from Saint Cloud to Saint Vincent, and from Saint Cloud to the waters of Lake Superior, to the said Saint Paul and Pacific Railroad Company, as by reference to said legislative acts will more fully and at large appear.

And whereas the Congress of the United States aforesaid, by another act thereof, to wit, an act entitled "An act authorizing the Saint Paul and Pacific Railroad Company to change its lines, in consideration of
141 a relinquishment of lands," approved March 3d, 1871, enacted and declared "that the St. Paul and Pacific Railroad Company may so alter its branch lines that instead of constructing roads from Crow Wing to Saint Vincent, and from Saint Cloud to the waters of Lake Superior, it may locate and construct, in lieu thereof, a line from Crow Wing to Brainerd, to intersect with the Northern Pacific Railroad,

and from St. Cloud to a point of intersection with the line of the original grant at or near Otter's Tail or Rush Lake, so as to form a more direct route to Saint Vincent, with the same proportional grant of land, to be taken in the same manner along the said altered line as is provided for the present lines by existing law; provided, however, that this change shall in no manner enlarge said grant, and that this act shall only take effect upon the condition of being in accord with the legislature of the State of Minnesota, and upon the further condition that proper releases shall be made to the United States by said company of all lands along said abandoned lines from Crow Wing to Saint Vincent, and from Saint Cloud to Lake Superior, and that upon the execution of said release such lands so released shall be considered as immediately restored
142 to market without further legislation."

And whereas the act of Congress last aforesaid was in conformity with the legislation of the State of Minnesota, and particularly with the act thereof aforesaid approved February 6th, 1864.

And whereas the said company has duly accepted the act of Congress last aforesaid, and duly resolved to alter and relocate its branch lines of railroad, as therein provided, and to execute and deliver the releases of land along said abandoned route therein mentioned.

And whereas the said party of the first part has entered into a certain contract, bearing even date herewith, for the construction and equipment of said railroads from Saint Cloud to Saint Vincent, and Watab to Brainerd, with a certain other company of the State of Minnesota, known as the First Division of the Saint Paul and Pacific Railroad Company, being a corporation created and organized under an act of the legislature of the said State entitled "An act to amend the charter of the St. Paul and Pacific Railroad Company," approved February 6th, 1864, and in and by such contract the last-mentioned company has agreed to loan and advance to the said party of the first part, or for its use and
143 benefit in the construction and equipment of said railroad, the sum of fifteen millions of dollars, in bonds of the said company, payable and secured to be paid as hereinafter described; and the said party of the first part has agreed to assume and secure the payment of the said bonds according to the times thereof.

And whereas, pursuant to such construction contract, and in due conformity therewith, the said First Division Company of the Saint Paul and Pacific Railroad Company has duly resolved to execute and issue its certain bonds or obligations of one thousand dollars each, payable to the said parties of the second part thereto as trustees, or to bearer, on the first day of January, in the year of our Lord one thousand nine hundred and one, and bearing interest at the rate of seven per centum per annum, payable semi-annually, on the first days of January and July of each year, in lawful money of the United States if demanded in New York, or in British pounds sterling, at the rate of four shillings British money per dollar, if demanded in London, at the option of the holder.

And whereas the said bonds, or as many thereof as may be nec-
144 essary, are to be issued and negotiated for the purpose of procuring means to construct and equip the said lines of railroad, and are to be equally and ratably secured hereby, without discrimination or preference between them on account of the times of actual issue or negotiation; and whereas the said bonds are all of like tenor and date, and in the form following:

$1,000.

UNITED STATES OF AMERICA, STATE OF MINNESOTA.

[Vignette.] [Vignette.]

First mortgage bond.

Upon 348 miles of railroad and 2,217,200 acres of land.

No. . | Issued by

THE FIRST DIVISION OF THE ST. PAUL AND PACIFIC RAILROAD COMPANY.

To construct roads from St. Cloud to St. Vincent, and from Watab to Brainerd.

Know all men by these presents that the First Division of the St. Paul and Pacific Railroad Company is indebted to Horace Thompson and George L. Becker, of St. Paul, and William G. Moorhead, of Philadelphia, trustees, or bearer, in the sum of one thousand dollars, lawful money of the
145 United States of America, which said sum the said company hereby promises to pay to the said trustees, or to the bearer hereof, on the first day of January, in the year one thousand nine hundred and one, in the lawful money aforesaid at its office or agency in the city of New York, or in British pounds sterling, at the rate of four shillings per dollar, at the agency of the said company in the city of London, England, at the option of the holder, with interest on the said principal sum at the rate of seven per cent. per annum, payable semi-annually, on the first days of January and July in each year, in the lawful money aforesaid, on presentation and surrender of the coupons hereto annexed as they severally become due, at the said office or agency in New York, or payable in British pounds sterling, at the rate of four shillings for each dollar, on presentation and surrender of such coupons respectively at the banking house of Robert Benson & Co., in London, England, at the option of the holders, which payment of interest shall in all cases be made without deduction or abatement of any income or other tax imposed or to be imposed by the Government of the United States or any law thereof, and which the said company lawfully might deduct from such inter-
146 est to pay over to any officer of said government, it being understood that such taxes are to be paid by the said company in addition to such interest. And it is hereby expressly declared and agreed that in case default shall be made in payment as aforesaid of any semi-annual installment of interest on this bond, and such installment of interest shall remain unpaid and in arrear for the period of six months after the same shall have become due and been demanded, the principal of this bond, as well as of all the bonds of the series of which this is one, shall become and be due and payable immediately, but subject nevertheless to the provisions in that behalf of the deed of trust or mortgage hereinafter mentioned.

This bond is one of a series of fifteen thousand bonds of like tenor and date, numbered consecutively from 1 to 15,000, inclusive, and amounting in the aggregate to fifteen millions of dollars and the payment of the principal and interest whereof is secured by a certain deed of trust or mortgage, bearing even date herewith, duly executed and delivered by the St. Paul

and Pacific Railroad Company (being the corporation owning the railroad for the construction of which these bonds are issued) to the said Horace Thompson, George L. Becker, and William G. Moorhead, trustees,
147 and conveys to the said trustees certain railroads which the said Saint Paul and Pacific Railroad Company is authorized to construct and operate in the said State of Minnesota, to wit, a railroad from at or near Saint Cloud to Saint Vincent, being a distance of two hundred and ninety-three (293) miles, more or less, and a railroad from Watab to Brainerd, being a distance of fifty-five (55) miles, more or less, together with the equipments and appurtenances of the said railroads respectively, and the rights, privileges, and franchises thereunto respectively appertaining, and which conveys also to the said trustees all the right, title, and interest which the company last aforesaid now has, or shall or may hereafter acquire, by the construction of said railroads or any part thereof, or otherwise, into or concerning certain lands situate in the said State which were heretofore granted by the Congress of the United States to aid in the construction of such railroads by acts of the said Congress approved respectively March 3d, 1857, March 3d, 1865, and March 3d, 1871; the extent and aggregate area of such lands to which said company will become entitled by the construction of said railroads under existing legislation being estimated at two million two hundred and seventeen thousand and two hundred (2,217,200) acres, more or less.

148 This bond shall pass by delivery unless registered in the name of the owner on the books of the company in New York or London, but after a registration of ownership, certified hereon by a transfer agent or officer of the company, no transfer hereof, except upon the books of the company, shall be valid unless the last preceding transfer shall have been made to bearer, but this bond shall continue subject to successive registration of ownership and transfers to bearer at the option of each holder.

This bond is made, by the terms of the deed of trust or mortgage aforesaid, receivable at par in payment for any and all lands embraced in said deed which may be sold by the said Saint Paul and Pacific Railroad Company in conformity therewith. This bond shall not become valid or obligatory until authenticated by a certificate endorsed thereon and duly signed by the trustees under said deed.

In witness whereof the said company has caused its corporate seal to be hereunto affixed and the same to be attested by the signatures of its president and secretary, and has likewise caused the coupons hereto annexed to be signed by its secretary, this first day of April, one thousand eight hundred and seventy-one.

, *President*
, *Secretary*

149 Now, therefore, this indenture witnesseth:

That the Saint Paul and Pacific Railroad Company aforesaid, being the party of the first part hereto, in consideration of the premises and of the sum of one dollar to the said company duly paid, at or before the ens aling and delivery of these presents, by the said parties of the second part, the receipt whereof is hereby acknowledged, has promised and agreed, and by these presents does promise and agree, to and with the said parties of the second part, for the benefit of any and all persons who shall or may become holders for value of the bonds aforesaid, or any of them, or of any coupons thereunto annexed, that the said Saint Paul and Pacific Railroad Company, its successors or assigns, shall and will, well and truly, pay the said bonds and each of them, and

all the interest to accrue upon the said bonds, or any of them, when the same shall become due, or cause the same to be paid unto the parties entitled thereto, according to the tenor of said bonds respectively, and of the respective coupons thereunto annexed; but nothing herein contained shall impair or in any manner whatsoever effect the liability of the First Division of the Saint Paul and Pacific Railroad Company upon the
150 said bonds and coupons to the holders thereof.

And this indenture further witnesseth that for and in consideration of the premises, and the sum of one dollar to it duly paid as aforesaid, the said parties of the first part to these presents, in order the better to secure the payment of the principal of the said bonds, and all interest thereon, as the same shall become payable, according to the tenor of said bonds and the terms of the coupons thereto respectively annexed, has granted, bargained, and sold, and by these presents does grant, bargain, sell, convey, and transfer, unto the said parties of the second part, as joint tenants and not as tenants in common, and to the survivors and survivor of the said parties of the second part, and the heirs and assigns of such survivor, all and singular that certain branch line of railroad of the said party of the first part, or which the said party of the first part is by law authorized to construct, and which is to be constructed and run from some point at or near the town of Saint Cloud, in the county of Stearns, to the town of Saint Vincent, in the county of Pembina, and State of Minnesota, being a distance of two hundred and ninety-three (293) miles, more or less, and also all
151 and singular that certain other line of railroad of the party of the first part, or which the said party of the first part is authorized by law to construct, and which is to be constructed and to run from Watab, in the county of Benton, by the way of Crow Wing, to Brainerd, in the county of Crow Wing, to intersect with the Northern Pacific Railroad, being a distance of fifty-five (55) miles, more or less, as contemplated by the said act of Congress approved March third, 1871, together with the equipments and appurtenances of the said railroads respectively, and the rights, privileges, and franchises thereunto respectively belonging, or in any wise appertaining, or which shall or may, at any time hereafter, thereunto belong or in any wise appertain; and, also, all right, title, or interest which said party of the first part now has, and all right, title, and interest which the said party of the first part, its successors or assigns, shall or may, at any time hereafter, acquire, by reason of the construction of said railroads, or of either or any part of either thereof, or otherwise, into or concerning the lands situate, lying, and being in the State of Minnesota which
152 are embraced or intended to be embraced in the grants aforesaid, or any of them, made by the Congress of the United States to the former Territory and present State of Minnesota, by the acts of said Congress hereinbefore mentioned, or either of them, and which have been granted by the said State to the party of the first part, or shall or may be granted or conveyed to the said party of the first part, its successors or assigns, to aid in the construction of the said lines of railroad, or of either or of any part of either, including in the premises hereby conveyed; and it being the true intent of these presents to convey the road-beds of said railroads, respectively, and all tracks, bridges, viaducts, culverts, fences, depots, stations, station-houses, engine-houses, car-houses, freight-houses, wood-houses, machine-shops, and other shops, and all other structures, buildings, and materials whatsoever placed, or to be placed, on the said railroads respectively, or on either, or any part of either thereof, or acquired, or to be acquired, for the use of the

same; and, also, all locomotives, tenders, passenger, baggage, freight, cattle, and other cars, and all rolling stock whatsoever, and all machinery, tools, implements, fuel, and materials for constructing, operating, repairing, or replacing the said railroads, or either or any part of either thereof, or any of the equipments or appurtenances of the said railroads, or of either or any part of either thereof, and all property, rights, and privileges whatsoever appertaining to the said railroads, or to either or any part of either thereof, now held by the said party of the first part, or hereafter to be acquired by the said party of the first part, its successors or assigns, together with all and singular the tenements, hereditaments, and appurtenances to the said railroads, lands, and premises, or any part thereof, belonging or in any wise appertaining; and, also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well as in law as in equity, of the said party of the first part in, to, and concerning the same, and each and every part and parcel thereof, with the appurtenances; to have and to hold the said railroad's lands and premises unto the said parties of the second part, as joint tenants and not as tenants in common, and unto the survivors and survivor of the said parties of the second part, and the heirs and assigns of such survivor forever; but in trust, nevertheless, to and for the uses and purposes, and with the powers and authorities hereinafter mentioned and set fourth, that is to say:

ARTICLE FIRST. Until default shall be made by the said First Division of the Saint Paul and Pacific Railroad Company, its successors or assigns, in payment of either the principal or interest of the said bonds, or some one of them, the said parties of the first part, its successors or assigns, shall be suffered and permitted to possess, manage, and operate and enjoy the said railroads respectively, with the equipments and appurtenances thereof, and the franchises appertaining thereto, and to receive, take, and apply to its and their own use the tolls, incomes, revenues, rents, issues, and profits thereof, in the same manner and with the same effect as if this deed had not been made.

ARTICLE SECOND. In case default shall be made in the payment of any interest to accrue on any of the aforesaid bonds issued or to be issued, by the First Division of the Saint Paul and Pacific Railroad Company, when such interest shall become payable according to the tenor of such bond or the terms of any coupon thereto annexed, and such default shall continue for the period of three months, or in case default shall be made in the payment of the principal of any such bonds, or in case default shall be made in the observance or performance of any other matter or thing in these presents mentioned and agreed, or required, to be observed and performed by the party of the first part, its successors or assigns, or by the said First Division of the Saint Paul and Pacific Railroad Company, its successors or assigns, and such default shall continue for the period of six months, then and from thenceforth and in either of such cases, it shall be lawful for the said parties of the second part, being the trustees under these presents, or for the survivor or survivors of said trustees, or their or his successors or successor, personally or by their or his attorneys or agents, to enter into and upon all and singular the railroads and premises hereby conveyed, or intended so to be, or any part thereof, and from henceforth to have, hold, possess, and use the said railroads and premises, and each and every part and parcel thereof then subject to the lien of these presents operating and conducting the business of the said railroads respectively, by their or his superintendents, managers, receivers, and

servants, or other attorneys or agents, and making from time to time all repairs and replacements, and such useful alterations, addi-
156 tions, and improvements thereto, as may seem to them or him to be judicious, and to collect and receive all tolls, fares, freight, incomes, rents, issues, and profets of the same and of every part thereof; and after deducting the expenses of operating the said railroads, respectively, and conducting the business thereof, and of all the said repairs, replacements, alterations, additions, and improvements, and all payments which may be made or may be due for taxes, assessments, charges, or liens prior to the lien of these presents upon said premises or any partthereof, as well as just compensation for their or his own services, and for the services of such attorneys and counsel as shall have been by them or him employed, to apply the moneys arising as aforesaid to the payment of interest on the said bonds, in the order in which such interest shall have become or shall become due, ratably to the persons holding the coupons evidencing the right to such interest; and if, after paying in full the interest which shall have accrued on the said bonds, a surplus of the moneys arising as aforesaid shall remain, and the principal of such bonds shall not be due, nor such surplus nor any part thereof required, in the judgment of said trustees, for the protection of the property, or to provide for the installment of interest next thereafter to fall due, the same shall be paid over to the said party of
157 the first part; but in case the principal of said bonds or any of them shall have become due, the surplus arising as aforesaid shall be reserved to be applied to the payment of said bonds upon the sale of said railroad and premises, as provided in the next following article of these presents.

ARTICLE THIRD. In case default shall be made in payment of interes on said bonds, or any of them, as aforesaid, and shall continue as aforesaid, or in case default shall be made in the payment of the principal, or any part thereof, of the said bonds or any of them, it shall be lawful for the trustees, or for the survivors or survivor of the said trustees, or for their or his successors or successor in the trust by these presents created, to enter into and upon all and singular the railroads and premises aforesaid, and after such entry, or after other entry, or without entry personally or by their or his attorneys or agents, to sell and dispose of the said railroads and of all and singular the property-rights and franchises hereinbefore conveyed, or intended so to be, and which shall be then subject to the lien of these presents, at public auction, either in the city of New York or the city of Saint Paul aforesaid, or at such place along the line of either of said railroads and within the State of Minnesota as the said trustees, or the survivors or survivor of
158 them, or their or his successors or successor in said trust, shall designate, and at such time as they or he shall appoint, having first given notice of the time and place of such sale, by advertizement published not less than three times a week, for six successive weeks, in one or more newspapers in the city of New York, and also published not less than three times in each week, for six weeks, in one or more newspapers in the city of Saint Paul, and also in the city of London, and after such notice it shall be lawful for the said trustees or trustee to make such sale or to adjourn the said sale from time to time, in their or his discretion, and, if so adjourning, to make the same, without further notice, at the time and place to which the same may be so adjourned, and to make and deliver to the purchaser or purchasers of the said railroads, lands and premises, or any part thereof, good and sufficient deed or deeds in the law for the same, in fee simple; which sale, made as

aforesaid, shall be a perpetual bar, both in law and equity, against the said party of the first part, its successors or assigns, and all other persons claiming or to claim the said premises, or any part or parcel thereof, by, from, through, or under the said party of the first part, its successors or assigns.

And after deducting from the proceeds of such sale just allow-
159 ances for all expenses thereof, including attorney's and counsel fees, and all other expenses, advances, or liabilities which may have been made or incurred by the said trustees or trustee in operating or maintaining the said railroads and premises, or in managing the business thereof, it shall be lawful for the said trustees or trustee, and it shall be their or his duty, to apply the residue of the moneys arising from such sale to the payment of the principal and accrued and unpaid interest on all the said bonds which shall then be outstanding, without discrimination or preference as between principal and accrued and unpaid interest, or as between the holders of said bonds or of any coupons issued therewith, but equally and ratably to all such bond and coupon holders.

And it is hereby declared and agreed that the receipt of the said trustees shall be sufficient discharge to the purchaser and purchasers at such sale for his or their purchase-money, and that after payment of such purchase-money, and having such receipt, the said purchaser or purchasers shall not be obliged to inquire into the application of such purchase-money upon or for the trusts or purposes of these presents, or be in any manner whatsoever answerable for any loss, misapplica-
160 tion, or non-application of such purchase-money, or of any part thereof, or be obliged to inquire into the necessity, expediency, or authority of or for any such sale.

ARTICLE FOURTH. At any public sale of the said railroads and property, or of any part thereof, whether made by virtue of the power hereinbefore granted or by judicial authority, the trustees hereunder for the time then being may bid for and purchase, or cause to be bid for and purchased, the property so sold, or any part thereof, in behalf of all the holders of bonds secured by this instrument and then outstanding, in the proportion of the respective interests of such bondholders, at a reasonable price, if but a portion of said property shall be sold; and if the entire railroad and property shall be sold, then at a price not exceeding the whole amount of said bonds then outstanding, with the interest accrued thereon and the expenses of such sale.

ARTICLE FIFTH. In case default shall be made in the payment of any half-year installment of interest on any of the said bonds, when such interest shall become payable according to the tenor of said bond,
161 or of any coupon thereto annexed, and such installment of interest shall remain unpaid and in arrear for the period of six months after the same shall have been demanded and become payable as aforesaid, then and from thenceforth the principal sum of each of the bonds aforesaid shall, at the option of the trustees hereunder, become and be immediately due and payable, notwithstanding that the time limited in the said bonds for the payment thereof may not then have elapsed; but a majority in interest of the holders of all the bonds aforesaid which shall be then outstanding, and upon which default in the payment of the interest shall have been made and be continuing, shall have the power, by an instrument in writing, under their hands and seals, or by a vote at a meeting duly convened and held as hereinafter provided, at any time before the actual payment and acceptance of the interest in arrear, to instruct the trustees to declare the principal due or to waive

the right so to declare, on such terms and conditions as such majority in interest shall prescribe; and such majority in interest may, by such instrument in writing, or such vote, annul or reverse any declaration of the trustees in respect to said bonds becoming or not becoming
162 immediately payable; provided always that no act or omission either of the trustees or the bondholders in the premises shall extend to or be taken in any manner whatsoever to effect any subsequent default.

ARTICLE SIXTH. The trustees hereunder shall, at all times during the continuance of the trust hereby created, have full power and authority, to be exercised in their own discretion, and not otherwise, to release and convey to any party who may be designated in writing by the said party of the first part, its successors or assigns, to receive the same, or to release from the line and operation of these presents in such other manner as they may deem proper, any portion of the premises hereinbefore granted which may be appurtenant to either of the said railroads, but which, in the judgment of the said trustees, shall be unnecessary for use in connection therewith, and which shall have been acquired or held for stations, depots, shops, or other buildings, or for a supply of fuel, gravel, or other material, and also to convey or release as aforesaid, on like request, any lands not occupied by the track which
163 may become disused by reason of a change of the location of any station-house, depot, shop, or other building connected with either of the said railroads, and such lands occupied by the track and adjacent to such station house, depot, shop, or other building, as the said party of the first part, its successors or assigns, may deem it expedient to disuse or abandon by reason of such change; and they may consent to any changes in the location of any depot or other building which, in their judgment, shall have become expedient, and make and deliver the instruments necessary or proper to carry the same into effect; provided always that any and all lands and premises which shall be acquired for permanent use, in substitution for any so released, shall be conveyed to the trustees upon the trusts of these presents, and that the proceeds of any and all lands and premises for which others shall not within a reasonable time be required shall be paid over to the said trustees, to be by them invested in the purchase of the bonds aforesaid, in the manner hereinafter provided, which bonds shall, when so purchased, be cancelled and surrendered to the party of the first part, its successors or assigns; and the trustees shall also have full power to allow the
164 said party of the first part, its successors or assigns, from time to time, to dispose, according to its or their discretion, of such portions of the equipments, machinery, and implements which shall be at any time held or acquired for the use of either of the said railroads, but which shall have become unfit or unnecessary for such use; it being provided, however, that any and all new or other equipment, machinery, and implements which may be required in substitution for any so released shall, by virtue and force hereof, become and be, immediately upon the acquisition of the same, subject to the lien and operation of these presents, without any new conveyance or transfer, or other act or ceremony whatsoever; and the proceeds of all sales of equipment or other personal property which may not be reinvested in new equipment, machinery, or implements for use upon or in connection with said railroad, shall be paid over to the said trustees, to be by them applied as hereinafter provided in regard to the proceeds of the sales of lands.

ARTICLE SEVENTH. The said party of the first part, its successors or assigns, shall and will, as soon as conveniently prac-

165 ticable after the date hereof, cause all and singular the lands granted as aforesaid to aid in the construction of said railroads to be carefully valued and appraised by one or more competent persons, in convenient sections, divisions, or parcels, fore sale to emigrants and actual settlers, and in such apprais'ment any and all lands containing or supposed to contain coal or iron, or any valuable mineral substance, shall be distinguished from those which are classed as agricultural or pastoral, and shall cause a full and accurate list and description of said lands and premises containing, opposite each appraised section, division, or parcel, the value put upon the same, to be deposited with each of the said trustees, certified under the hands and seals of the appraisers, which apprais'ment shall be subject to the approval of said trustees, or a majority of them, and such statement and appraisal may, with the consent of them, or a majority of them, be, from time to time, revised, altered, and corrected, a statement being in each case filed as aforesaid; and the said party of the first part, its successors or assigns, may, at any time, in its or their own discretion, and not otherwise, contract for the sale of any section, division, or parcel of said lands so appraised,

166 at a price not less than the appraised value thereof according to the last preceding statement of such value filed with said trustees, and approved by them or any two of them as aforesaid, and shall be entitled to have such section, division, or parcel of said lands released from the lien hereof, upon the payment to the said trustees of the purchase money of the same, not less than such appraised value thereof; and the said trustees, or any two of them, are hereby authorized and empowered, upon the sale as aforesaid of any such section, division, or parcel of such lands, and the payment of the purchase money thereof as aforesaid, to release and convey to such purchaser or purchasers, or his or their heirs or assigns, the premises so sold, and thereby to discharge the same from the lien and operation of these presents and the trusts hereby created; provided always that no section, division, piece, or parcel of said lands shall at any time be sold or released as aforesaid below the appraised value thereof without the consent in writing of all the trustees first had and received to such sale.

And it is hereby farther declared and agreed that any of the

167 lands aforesaid may be sold as in this article above provided wholly or part on credit provided that in any and every case of sale wholly or partly by credit, and to whomsoever the sale may be made, the purchasers shall not receive a conveyance of the premises sold, or any part thereof, until payment in full of the purchase money, but may have delivered to him a contract in evidence of his purchase unless for any special reason it shall be expedient, in the judgment of the said trustees, or any two of them, to accept from such purchaser a purchase-money bond and mortgage for the amount remaining unpaid, in which case the said trustees, or any two of them, may release the said premises to such purchaser, upon receiving from him the cash portion of such purchase money, and his personal bond for the unpaid purchase money conditioned in double the amount of the said unpaid purchase money for the payment of the same, in installments or otherwise, within a period not exceeding five years from the date of such purchaser with interest thereon, payable semi-annually.

168 And it is hereby expressly declared and agreed that any and all of the bonds aforesaid issued or to be issued by the said First Division of the Saint Paul and Pacific Railroad Company as aforesaid, and the payment whereof is intended to be hereby secured, shall be payable and receivable, at the par value thereof, including the interest then

bondholders; and the bondholders may vote at such meetings in person or by proxy; and the quorum may be defined, and such other regulations and by-laws in respect to such meetings may be from time
175 to time established, altered, or repealed by the bondholders acting by the majority in interest, as to them shall seem expedient; and until the bondholders shall act, such powers may be exercised by the trustees.

The said trustees, and each of them, shall have the right to require that any act or resolution of the said bondholders affecting the duties of said trustees shall be authenticated by the signatures of all the persons assenting thereto, as well as by a minute of the proceedings of the meeting.

ARTICLE TWELFTH. The said party of the first part shall at all times keep at its principal office, and at its agencies in the cities of New York and London, respectively, a record of all the sales of lands which shall be made as aforesaid, and of the prices paid for the same, and the manner in which the purchase money shall have been paid or secured, and of the amount, denomination, and numbers of the said bonds (if any) surrendered on account thereof, which record shall, at all reasonable hours and times, be open to the inspection, with the right of copy therefrom, of any and all holders of the bonds secured hereby; and the said trustees, or a majority of them, shall semi-annually, to wit, in the months of Jan-
176 uary and July in each year, file in the said office a statement of the lands which shall have been by them released from the lien of these presents during the six months last preceeding the time of filing such statement, and of the consideration received by them therefor, and of the disposition made of the same, which statement of said trustees shall also be, at all reasonable hours and times, open to the inspection of said bondholders, with the right to copy therefrom as aforesaid.

ARTICLE THIRTEENTH. In case default shall be made in the payment of any semi-annual installment of interest to accrue on any of the said bonds, and if such interest shall remain unpaid and in arrear for the period of six months, or in case default shall be made in the payment of the interest of any of the said bonds, then, and in either and every such case, it shall be the duty of the trustees under these presents, upon a requisition to them in writing signed by the holders of not less than one-third of the whole amount of said bonds then outstanding, and upon adequate indemnity against all costs, expenses, and liabilities to be by said trustees incurred, to proceed to enforce the rights of the bondholders under these presents, either by the exercise of the powers granted
177 by articles second and third of these presents, or by a suit or suits in equity or at law, in aid of the execution of such powers or otherwise, as the said trustees, being advised by counsel learned in law, shall deem most effectual to enforce such rights; it being understood, and hereby expressly declared, that the rights of entry and sale hereinbefore granted are intended as cumulative remedies, additional to all other remedies allowed by law, and that the same shall not be deemed in any manner whatsoever to deprive the said trustees or the beneficiaries under this trust of any legal or equitable remedy by judicial proceedings consistant with the provisions of these presents, according to the true intent and meaning thereof.

And it is hereby further declared and agreed that in case any trustee hereunder shall, in violation of the terms of this article, refuse to proceed, or unreasonably delay in proceeding, to enforce the rights of bondholders, upon requisition and indemnity as above provided, any or either of the other trustees may proceed to enforce such rights in the

manner hereinbefore specified, and to exercise all the powers and authorities in that behalf hereinbefore granted, as validly and effectually as if the trustees so refusing or unreasonably delaying had joined in the enforcement and exercise of the same, provided al-
178 ways, and it is hereby expressly declared and agreed, that no holder of bonds secured to be paid hereby shall have the right to institute any suit or proceeding in law or equity for the foreclosure of this indenture, or the execution of the trust thereof, without first giving notice in writing to the said trustees of default having occurred, and requesting him, and affording him a reasonable opportunity, to institute such suit or proceeding in their own name, or to proceed to exercise the powers hereinbefore granted, and offering to them adequate indemnity against costs and expenses of such suit or proceeding; and such notification, request, and offer of indemnity is hereby declared to be a condition precedent to any cause of action for the foreclosure hereof or the appointment of a receiver hereunder.

ARTICLE FOURTEENTH. It is mutually understood and agreed by and between the parties of these presents, and it is hereby declared, that the word "trustees" as used, and whenever the same may occur, in this indenture, is intended to refer to and describe, and the same shall in all cases be construed to mean, the persons, or, in case of
179 vacancies in the trust, the person, who for the time being shall be charged with the execution of the trusts of these presents, whether such persons or person be the said parties of the second part or any or either of them, or successors or a successor of the said parties of the second part, or any or either of them, hereunder; and in case of a vacancy or vacancies in said trust, the surviving or continuing trustees or trustee shall be competent to exercise any and all powers and authorities hereunder hereinbefore granted to the "trustees," or to the said parties of the second part. And it is further mutually agreed and declared that each of the said trustees shall be entitled to reasonable compensation for any and all services which may be hereafter rendered by him in said trust, which compensation the parties of the first part hereby promises and agrees to pay; but in case the said party should make default in such payment, the same may be retained by the trustees out of any trust moneys coming into their hands, and such reasonable sum as shall be so retained shall, unless the said trustees be then in possession of said premises, become and be a lien on the said premises, and secured by the trust of this indenture, to be paid by the said party of the first part, with interest, for the benefit of the sinking fund hereinbefore created.

180 And it is further mutually agreed that the said trustees shall not, nor shall any of them, be in any manner responsible for the default or misconduct of each other in said trust, or for the fault or misconduct of any agent or attorney appointed pursuant to these presents, if such agent or attorney be selected with reasonable care, or for anything whatever in respect to said premises or the trusts hereby created, except personal misconduct or gross negligence in the execution of said trusts.

And it is further mutually agreed that the said trustees, or any or either of them, may resign the trust hereby created, and be discharged from all further duty thereunder, upon giving three months' notice in writing to the said party of the first part, and calling a meeting of the bondholders, or upon such shorter notice as the said party of the first part, by a majority in interest of the said bondholders, may accept as sufficient; and also that the said trustees, or any or either of them, may

be removed from the office by a vote of a majority in interest of the holders of the said bonds, the said vote being had at a meeting of the said bondholders duly held, and being attested by an instrument
181 in writing under the hands and seals of the persons so voting, and that in case, at any time hereafter, either the said trustees or any trustees hereafter appointed shall die or resign, or be removed as herein provided or by a court of competent jurisdiction, or shall become incapable or unfit to act in the said trust, a successor to such trustee may be appointed by the holders for the time being of a majority in interest of the said bonds then outstanding, at a meeting of said bondholders to be duly convened and held in conformity with the provisions of these presents.

And be it further mutually agreed and declared that in case any trustee hereunder shall die or resign, or be removed as herein provided or otherwise, or become non compos mentis or otherwise legally incapable or unfit to act in said trust, all his powers and authorities shall, if there be any of his associate trustees or trustee continuing in office, vest in such associate trustees or trustee, subject to the provision of these presents, until the appointment of a successor to such trustee, and that upon the appointment of a successor to such trustee such successor shall, by force of these presents, and without any further assur-
182 ance or conveyance, become vested with and entitled to exercise any and all powers and authorities such trustee so dying, resigning, being removed, or becoming non compos mentis or otherwise legally incapable or unfit to act in said trust was vested with or entitled to exercise at the time of his decease, resignation, or removal, or of his becoming non compos mentis or legally incapable or unfit to act as such trustee; but, nevertheless, in case of resignation or removal, the said trustee so resigning or being removed, and in case of the death of a trustee, the surviving trustee, shall, if so required by a majority in interest of the said bondholders, or by the new trustee who may be appointed, execute, acknowledge, and deliver to him a good or sufficient deed or other instrument to vest in him all the powers and authorities which were possessed by his predecessor in said trust aforesaid under and by virtue of these presents; provided, nevertheless, that in case it shall prove after reasonable exertions to be impract*a*cable to appoint a trustee in the manner aforesaid, and that the appointment of such new trustee shall be inconveniently or unreasonably delayed, and that such vacancy in such trust shall continue for a period of ninety days after the existence of the same shall have been known to any meeting
183 of said bondholders, and to the said party of the first part, it shall be competent for any holder or holders of said bonds to the amount of not less than five hundred thousand dollars to apply to any court of competent jurisdiction for the appointment of a new trustee to fill such vacancy, upon such reasonable notice to the parties interested, including the said party of the first part, as the said court may prescribe; and any trustee lawfully appointed upon such application shall become vested with and be subject to the same powers and authorities as if appointed by the said bondholders in the manner aforesaid.

And it is hereby further expressly declared and agreed that whenever and as often as any contingency shall arise in which the action of a majority in interest of the holders of said bonds shall be necessary, or in which the said bondholders are herein declared to have any discretionary voice or power, it shall be the duty of the said trustees, and they and a majority of them shall be and are hereby authorized and required, to call a meeting of all the holders of bonds secured hereby, to be held

in the city of New York, by advertisement (the expense whereof shall be a liability of the said party of the first part hereunder, & may be defrayed if necessary from the trust funds), to be published three times in each week for six weeks in at least two newspapers of good cir-
184 culation among the business community in said city, and one newspaper in the city of London, or the said meeting may be called in such other manner as may be prescribed for the convening of meetings of said bondholders pursuant to the provisions of this instrument; and in default of such meeting being called by the said trustees, or a majority of them, within thirty days after notification in writing to them by any bondholder of the necessity therefor, it shall be competent for any holder or holders of bonds to the aggregate amount of five hundred thousand dollars to call a meeting in the manner aforesaid, and at such meeting so convened the holders of said bonds shall be competent to exercise, in person or by proxy, all the powers and authorities conferred upon them by these presents.

ARTICLE FIFTEENTH. The First Division of the Saint Paul and Pacific Railroad Company having contracted as aforesaid to construct and equip said railroads, and it being contemplated by the said party of the first part to lease said railroads to the said company for a term of ninety-nine years, it is hereby expressly provided, agreed, and declared that any and every such lease shall be in all respects subject to these presents, and to the due enforcement and execution thereof, and to all and singular the powers, rights, and trusts herein contained; and it
185 is hereby further provided, agreed, and declared that any and all rolling-stock, equipment, and materials whatsoever which, pursuant to such lease or otherwise, shall or may be acquired or furnished for the use of the said railroads, or either of them, by the First Division of the Saint Paul and Pacific Railroad Company shall, by mere acquisition thereof for such use, become and be part and parcel of the property hereinbefore granted, and become and be subject in all respects to the lien and operation thereof in the same manner and with the same effect as if such property had been acquired by the said party of the first part hereto for such use.

ARTICLE SIXTEENTH. If the said First Division of the Saint Paul and Pacific Railroad Company, or the said party of the first part, or the successors or assigns of either of the said companies, shall well and truly pay the principal of each and every of said bonds, when the same shall become payable, and all interest thereon, as such interest shall from time to time mature, according to the tenor of such bonds, respectively, and the terms of the several coupons thereto annexed, and shall well and truly do and observe every other matter or thing provided or mentioned in these presents to be by them respectively done and observed, then, and in that case, all the estate, right, title, and interest of the
186 said parties of the second part, and of the survivors and survivor of them, and of their and his successors and successor in the trust by these presents created, shall cease, determine, and become void; otherwise the same shall remain in full force and virtue.

And the said party of the first part, for itself, its successors, or assigns, in consideration of the premises and of one dollar to it duly paid by the said parties of the second part, the receipt whereof is hereby acknowledged, hereby covenants and agrees to and with the parties of the second part, and their successors in the trust created by these presents, that whenever and as often as the said party of the first part, its successors or assigns, shall hereafter acquire any lands from the Govern-

ment of the United States or from the State of Minnesota by reason of the construction of the railroads hereinbefore granted, or of either or any part of either thereof, or shall acquire any other property, rights, franchises, or things whatsoever pertaining to or for use upon the railroads hereinbefore granted, or either or any part of either thereof, the said party of the first part, its successors and assigns, shall and will acquire, possess, and hold the same, and every part and parcel thereof, upon and subject to the trusts of this indenture, until conveyance thereof, in pursuance of the covenant next hereinafter contained,
187 shall be duly made and delivered to the said parties of the second part, or their successors in the trust by these presents created.

And the said party of the first part, for itself, its successors, and assigns, hereby covenants and agrees to and with the said parties of the second part, and their successors in the trusts created by these presents, that the said party of the first part, its successors and assigns, or the said First Division of the Saint Paul and Pacific Railroad Company, its successors or assigns, shall and will diligently and faithfully use and apply the net proceeds of the negotiation of said bonds, or such of them as shall be negotiated, to the construction and equipment of said railroads, and shall and will, in each and every year ensueings the date thereof, also faithfully use and apply the net earnings and income to be from time to time derived from said railroads, or either of them, to the payment of the interest accruing in such year on said bonds, when the same shall become due, until all the said bonds shall be fully paid and satisfied; and that the said party of the first part and the First Division of the Saint Paul and Pacific Railroad Company, and their respective successors and assigns, shall and will from time to time, and at all times hereafter as often as thereunto requested by the trustees
188 under this indenture, execute, deliver, and acknowledge all such further deeds, conveyances, and assurances in the law for the better assuring unto such trustees upon the trusts herein expressed the railroads aforesaid, together with their equipments, appurtenances, and franchises, and all and singular the lands, property, and things herein before mentioned or described and granted or conveyed, or agreed to be granted or conveyed, to the said parties of the second part, or their successors, in the trust created by these presents, as by the parties of the second part, or their successors in the trust hereby created, or by their counsel learned in law, shall be reasonably advised, devised, or required.

In witness whereof the said party of the first part has caused its corporate seal to be hereunto affixed, and the same to be attested by the signatures of its president and secretary, and the said parties of the second part, for the purpose of evidencing their acceptance of this trust, have hereunto set their hands and seals the day and year first above written.

189 *Exhibit C, referred to in the foregoing complaint.*

This indenture, made the first day of April, in the year of our Lord one thousand eight hundred and seventy-one, by and between the Saint Paul and Pacific Railroad Company, a corporation of the State of Minnesota, of the first part, and the First Division of the Saint Paul and Pacific Railroad Company, a corporation of the same State, of the second part, witnesseth:

Whereas the said party of the second part has, by an agreement bearing even date herewith, contracted and agreed to assume and undertake the construction of the lines of railroad which the said party of the first part

is by law authorized to construct, maintain, and operate in the said State of Minnesota, from some point at or near St. Cloud, in the county of Stearns, to the town of St. Vincent, in the county of Pembina, being a distance of two hundred and ninety-three (293) miles, more or less, and from Watab, in the county of Benton, to Brainerd, in the county of Crow Wing, being a distance of fifty-five (55) miles, more or less, and to complete and put the same, and every part thereof, in good running order and condition within the time and in the manner
190 required by the acts of Congress granting lands to the Territory and State of Minnesota to aid in the construction of said railroads, to wit, an act of the said Congress entitled "An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of certain railroads in said State," approved March 3d, 1857; and a certain other act thereof entitled "An act extending the time for the completion of certain land-grant railroads in the State of Minnesota and Iowa, and for other purposes," approved March 3d, 1865; and a certain other act thereof entitled "An act authorizing the Saint Paul and Pacific Railroad Company to change its lines in consideration of a relinquishment of lands," approved March 3d, 1871; and the acts of the legislature of said State of Minnesota executing the trust created by the said acts of Congress, or in relation to the disposition of lands therein mentioned, to wit, an act of the said legislature entitled "An act to facili'ate the construction of the Minnesota & Pacific Railroad, and to amend and continue the act of incorporation relating thereto," approved March 10, 1862, and acts amendatory thereof or relating to the railroad therein described, approved respectively February
191 6th 1864, March 4th, 1864, and March 2d, 1865, or such other acts as shall or may hereafter be passed by the said Congress and the said legislature respectively, so that the said party of the first part shall and may become vested under the said acts with legal title to all and singular the lands thereby granted to aid in the construction of the said lines of railroad, or either of them.

And whereas the said party of the second part, in and by such contract, agree to execute, issue, and offer for sale and negotiation a series of bonds amounting in the aggregate to fifteen millions of dollars, and consisting of fifteen thousand bonds of one thousand dollars each, bearing date on the first day of April, in the year one thousand eight hundred and seventy-one, and payable on the first day of January, in the year one thousand nine hundred and one, in lawful money of the United States in the city of New York, or in British pounds sterling in the city of London, at the rate of four British shillings per dollar, at the option of the holder, and bearing interest at the rate of seven per centum per annum, payable semi-annually, in lawful money of the United States if demanded, in New York, or in British pounds sterling if demanded in London aforesaid, at the option of the holder
192 of the coupons representing the same; and the said party of the first part agreed, for the benefit of the parties who may become holders of the said bonds, to assume and secure the payment thereof by the execution and delivery to trustees of a deed of trust or mortgage of and upon all and singular the said lines of railroad so to be constructed, with ther equipments, appurtenances, and franchises, and also of and upon all right, title, and interest now held and hereafter to be acquired by the said party of the first part in and to the lands granted by Congress as aforesaid to aid in the construction of said lines of railroad, and sub-

ject to said deed of trust or mortgage, and not otherwise, to execute and deliver to the said party of the second part a lease of the said lines of railroad for the term of ninety-nine years; the said party of the second part agreeing to operate, maintain, and from time to supply with all necessary and proper equipment the said railroads, and to apply, semi-annually, any and all net earnings and income thereof to the payment, in the first place, of the interest on said bonds as the same shall fall due, and if in any year, after paying in full out of the said net earnings all interest on said bonds which have become due, a balance or
193 surplus of said net earnings shall remain, to pay over the same to the trustees for the time being under the deed of trust or mortgage aforesaid securing the payment of said bonds, to be by the said trustees used and applied in the payment of the interest on said bonds, and the redemption of the principal thereof, in the manner provided in said deed of trust or mortgage in reference to the net proceeds of the sales of lands granted by Congress to aid in the construction of said railroads mentioned therein; provided, however, that when all the bonds aforesaid shall have been fully paid and satisfied, principal as well as interest, or due provision made in money for the payment thereof, then, and from thenceforth, all net earnings of the said railroads, or any of them, remaining in any year after paying the expense, of operating & maintaining the said railroads during such year, and carrying on the business thereof, shall, within a reasonable time after the close of such year, be paid over to the said party of the first part, to an amount equal so far as such net earnings may suffice to a dividend of six per centum upon the whole aggregate amount of the capital stock of the said party of the first part now issued and outstanding.

And whereas the said party of the second part has duly exe-
194 cuted the series of bonds aforesaid to the amount of fifteen millions of dollars, and is about to endeavor to negotiate the same for the purpose of procuring the means necessary to construct and equip said lines of railroad in pursuance of the said construction contract endeavor to and in conformity herewith, and the said party of the first part in like conformity to said contract has duly executed and delivered the deed of trust or mortgage securing the payment of said bonds in the said construction contract mentioned:

Now, therefore, this indenture witnesseth: That the said party of the first part, for and in consideration of the premises and the sum of one dollar to it duly paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, demised, and leased, and by these presents does grant, demise, and lease, unto the said party of the second part, its successors and assigns, all and singular the railroads aforesaid, which the said party of the first part is authorized to construct from a point at or near St. Cloud aforesaid to St. Vincent, in the State of Minnesota, and from Watab aforesaid to Brainerd, in the same State, together with the appurtenances of the said railroads respective-
195 ly, and the rights, privileges, and franchises thereunto belonging or in any wise appertaining, or which shall or may at any time hereafter thereunto belong or in any wise appertain to have and to hold the said railroads unto the said party of the second part, its successors and assigns, for and during the term of ninety-nine years from the date hereof, it and they keeping and performing the covenants and making from time to time the payments mentioned in these presents to be by it or them kept, performed, or made.

And the said party of the second part, for itself, its successors, and assigns, covenants, promises, and agrees to and with the said party of the first part that the said party of the second part, its successors and assigns, shall and will construct the said line of railroad to be constructed as aforesaid from Saint Cloud to Saint Vincent, and from Watab to Brainerd, in the time and in the manner hereinbefore mentioned, and shall and will from time to time, as the same may be needed, procure and supply for use upon the said railroads, respectively, any and all rolling stock, equipment, and materials whatsoever which shall or may be necessary and proper for the purpose of transacting the business of the
196 said railroads, or either of them; and it is understood and agreed, and hereby declared, that any and all rolling stock, equipments, and material whatsoever which pursuant to this lease or otherwise shall or may be acquired or furnished for the use of the said railroads, or either of them, by the said party of the second part, its successors or assigns, shall, by mere acquisition thereof for such use, become and be part and parcel of the property granted by the deed of trust or mortgage aforesaid bearing even date herewith, made by the said party of the first part to secure the issue of bonds of the said party of the second part to the amount of fifteen millions of dollars, and become and be in all respects subject to the lien and operation thereof, in the same manner and with the same effect as if said property had been acquired by the said party of the first part hereto for such use as is also provided and declared in the fifteenth article of said deed of trust or mortgage, and that the said party of the second part its successors and assigns, shall and will operate and maintain the said lines of railroad for the said term of ninety-nine years, in the manner hereinbefore mentioned, subject always, however, to the deed of trust or mortgage aforesaid and all and singular the provisions thereof, and the powers, rights, and authorities therein granted; and that it or they shall and will, in each and every year,
197 and at all times during said term, until the bonds aforesaid shall be fully paid and satisfied, use and apply the net earnings made and derived from the said lines of railroad, or either of them, or the business of the same, in and to the payment, in the first place, of the interest on the bonds aforesaid, as such interest shall semi annually become due and payable; and if, in any year after the payment of such interest, a surplus or balance of such net earnings shall remain, pay over such surplus or balance to the trustees for the time being under the deed of trust or mortgage aforesaid securing the payment of said bonds, to be by the said trustees used and applied in the payment of interest on said bonds and the redemption of the principal thereof in the manner provided in said deed of trust or mortgage in reference to the net proceeds of the sales of lands granted by Congress to aid in the construction of said railroads therein mentioned; provided, however, that when all the bonds aforesaid have been fully paid and satisfied, principal as well as interest, or due provision made in money for the payment thereof, then, and from thenceforth, all net earnings of the said railroads, or either of them, remaining in any year after paying
198 the expenses of operating and maintaining the said railroads during such year, and carrying on the business thereof, shall, within a reasonable time after the close of such year, be paid over to the said party of the first part to an amount equal to a dividend of six per cent. on the existing capital stock of the party of the first part as aforesaid, so far as such balance may suffice; and that the said party of the second part, its successors and assigns, shall and will do and perform any

and every act and thing mentioned or required in the deed of trust or mortgage aforesaid to be by it or them done or performed, and at the end of the said term or sooner termination of this lease surrender up the said premises to the said party of the first part, its successors or assigns.

And the said party of the second part further covenants, promises, and agrees to and with the said party of the first that the said party of the second part, its successors or assigns, shall and will, within a reasonable time after the expiration of each and every calendar year during the time aforesaid ensuing the date hereof, furnish to the said party of the first part, its successors or assigns, full, true, and detailed statements of the earnings of said railroads and the expenses of
199 operating and maintaining the same during such year, and that any and all books of account and vouchers containing or purporting to contain the accounts or entries of such earnings, or the expenses of the said railroads, or either of them, shall, at all reasonable hours and times, be open to the inspection of the said party of the first part, its successors or assigns, with the right to take transcripts therefrom.

In witness whereof the said parties of the first and second parts have caused their respective corporate seals to be hereunto affixed, and the same to be attested by the signature of their respective presidents & secretaries, the day and year first above written.

Exhibit D, referred to in the foregoing complaint.

This agreement, made and entered into this twelfth day of May, A. D. one thousand eight hundred and seventy-one, between the First Division of the Saint Paul and Pacific Railroad Company, party of the first part, and William G. Moorhead, esq., of Philadelphia, party of
200 the second part, witnesseth that the party of the second part undertakes, for and in consideration of the agreement hereinafter mentioned to be kept and performed by the party of the first part, to build and equip, as required by the laws of the United States and of the State of Minnesota in relation thereto, and in accordance with the profiles and plans of the chief engineer of said company, the lines of railroad from Sauk Rapids to Brainerd, and from some point on the branch line of the railroad of said first party at or near St. Cloud station to St. Vincent, all in the State of Minnesota, and equip the same with a sufficient amount of rolling stock, said work to be prosecuted as rapidly as can be done, with money furnished therefor by the party of the first part from the sales of its issue of bonds hereinafter mentioned.

In consideration of the foregoing undertaking on the part of the said party of the second part, and of the completion and equipment of the said lines of road in the manner hereinbefore specified, the said party of the first part agrees to pay to the said party of the second part all the net proceeds of its issue of bonds, amounting to fifteen millions
201 of dollars, such payments to be made as the work progresses, and upon the estimates of the chief engineer of the party of the first part.

In witness whereof the parties hereto have subscribed these presents, at the city of New York, on the day first above named, and the said party of the first part has also caused its seal to be hereunto attached.

In presence of—

{ SEAL OF THE FIRST DIV. ST. P. & P. R. R. CO. }

GEO. L. BECKER,
President of the First Division of the St. Paul & Pacific Railroad Company.
WM. G. MOORHEAD.

District court, 2nd district.

FARLEY
vs.
DE GRAFF & CO., ET ALS.

It is hereby stipulated that the papers hereto attached may be filed in the court and considered as attached to and form a part of the complaint, as copies of the agreement, mortgage, lease, & contract with Moorhead referred to in said complaint.

July 31st, 1875.

SMITH & EAGAN,
Att'ys for Russell.

202 GILMAN, CLOUGH & LANE,
Att'ys for De Graff & Co.

(Endorsed:) Filed March 9th, 1876. A. Armstrong, clerk, by Jas. O'Brien, dep'ty.

STATE OF MINNESOTA,
Ramsey County:

I, Albert Armstrong, clerk of district court, Ramsey County and State of Minnesota, to hereby certify that I have compared the foregoing paper writing with the original files & exhibits in the action therein entitled, now remaining of record in my office, and that the same is a true and correct copy and transcript of said original and the whole thereof.

Witness my hand and seal of said court at St. Paul, this 14th day of June, A. D. 1876.

SEAL DISTRICT COURT RAMSEY CO., MINN.

A. ARMSTRONG, *Clerk*,
C. H. MANSHIP,
Dep'ty Clerk.

203 In the circuit court of the United States for the district of Minnesota.

JESSE P. FARLEY, RECEIVER OF SAINT PAUL and Pacific Railroad, plaintiff,
vs.
CHARLES A. DE GRAFF ET AL., DEFENDANT.

The separate answer of the defendant Edwin M. Lewis, trustee in bankruptcy of William G. Moorhead and others, to the bill of complaint of Jesse P. Farley, receiver of the Saint Paul and Pacific Railroad, plaintiff.

This defendant, leave of court for him to appear and defend said suit having been first granted, for answer unto the said bill of complaint, or unto so much or such parts thereof as he is advised are or may be sufficient and necessary to be answered unto, saith:

I. This defendant admits that the plaintiff was appointed receiver as in the bill alleged.

He admits that the St. Paul and Pacific Railroad Company is a corporation as in the bill alleged.

204 He admits that the First Division of the Saint Paul and Pacific Railroad Company is a corporation as in the bill alleged.

He admits that the said Saint Paul and Pacific Railroad Company

and the said First Division of the Saint Paul and Pacific Railroad Company entered into a contract for the construction of the lines of road of the former company substantially as in the bill alleged.

He admits that the said First Division Company issued its bonds, in pursuance of such contract, to the amount in the bill alleged.

He admits that for the purpose of securing the payment of the principal and interest of said bonds the said St. Paul and Pacific Railroad Company executed its mortgage substantially as in the bill alleged.

He admits that the said Thompson, Becker, and Moorhead accepted the trust created by said mortgage substantially as in the bill alleged.

He admits that the said St. Paul and Pacific Railroad Company, about the time of the execution of the said mortgage, executed and delivered to the said First Division Company a lease of its lines of railroad substantially as in the bill alleged.

He admits that after the execution of said mortgage and lease, the said First Division Company actually sold and issued its bonds secured by said mortgage to the amount of about $10,700,000 face value.

205 He admits that on or about May 12, 1871, the said First Division Company and the said William G. Moorhead entered into a contract for the construction and equipment by the latter of the said lines of road of the said Saint Paul and Pacific Railroad Company, the terms of which contract were substantially as in the bill alleged.

He admits that after the making of the said contract between the said First Division Company and the said Moorhead, the latter entered into certain contracts with certain individuals, whereby such individuals agreed to do the work and furnish certain of the materials for the construction of said lines of railroad.

He admits that after the making of said contracts the said Moorhead purchased in Europe, and paid for with moneys arising from the sale of said bonds, a large quantity of railroad iron, amounting in all to about thirty-four thousand tons.

He admits that the said rails were purchased by the said Moorhead with the design on his part of using so many thereof as he should deem it necessary or advisable to use in the construction of the said lines of railroad.

He admits that all the rails so purchased were afterwards shipped to the said Moorhead, and were duly received by him at the port of New York.

He admits that only about one hundred forty-three and one-half

206 miles of said railroad have been completed, and that only a sufficient quantity of rails to iron that length of road, with switches and turnouts, have been actually used in the construction of said lines of railroad.

He admits that of the iron rails so purchased by the said Moorhead about seventeen hundred tons in quantity are lying at Glyndon, and about two thousand eight hundred and sixty tons are lying at Duluth.

He admits that on or about Nov. 11, A. D. 1872, the said Moorhead sold and transferred two thousand seven hundred tons in quantity to the said De Graff & Co., in part payment of certain moneys due and owing said De Graff & Co. for work done and materials furnished in the construction of said lines of railroad.

II. This defendant denies that the plaintiff, as receiver or otherwise, is entitled to the possession of any part of the one thousand eight hundred and sixty tons of iron rails lying at Duluth, which are hereinafter described.

He denies that the contract aforesaid, executed in May, 1871, between

the said First Division Company and the said Moorhead, whereby the latter undertook to construct and equip the said lines of railroad
207 in consideration of being paid therefor all the net proceeds of said fifteen millions dollars' issue of bonds, was in disregard or violation of any duty or obligation owing by the said company or by the said Moorhead to any party or person whomsoever.

He denies that the said last mentioned contract was entered into with any design whatever on the part of the said company, or of the said Moorhead, to divert from lawful uses, or to misappropriate, any part whatsoever of the proceeds of the said issue of bonds.

He denies that any part of the said one thousand eight hundred and sixty tons of iron rails ever became the property of the said St. Paul and Pacific Company or of the said First Division Company.

He denies that said mortgage ever covered or constituted a lien on any part of said one thousand eight hundred and sixty tons of iron rails.

He denies that any part of the said one thousand eight hundred and sixty tons of iron rails has ever been mixed or mingled with any other iron rails, so that they were not readily distinguished therefrom.

III. The said contract of May 12, 1871, for the construction of the said lines of railroad was entered into between the said First Division Company and the said Moorhead in good faith and solely for the purpose of securing the construction, equipment, and putting in operation of
208 the said lines of railroad in the time and manner limited by law, and of protecting the purchasers and holders of bonds of the said issue against the risk of the failure to so construct, equip, and put in operation the said lines of road; and the plan of securing the construction and equipment of said lines of railroad which was embraced in the said contract was the most advantageous and beneficial to the holders and purchasers of said bonds of any which could be devised. A copy of said contract is hereto annexed, marked Exhibit A.

After the execution of the said contract between the said First Division Company and the said Moorhead, and on Oct. 2 and 5, 1871, the latter, in good faith, and for the purpose of securing the construction, equipment, and putting into operation of the said lines of railroad in the time and manner required by law, entered into three several written costracts with Charles A. De Graff, William Crooks, and Nicholas De Graff, whereby the latter undertook to do all the work, and to furnish all the materials excepting the iron, for the construction of all and singular said lines of railroad, within the time and manner prescribed by law, in consideration of being paid for such work and materials from month to month as the work should progress, at certain just and reasonable prices therein specified.

Fort'with upon entering into the last mentioned contracts the said De Graff & Co. entered upon the fulfillment thereof, and with the
209 greatest vigor and dispatch continued to do work in and to furnish materials for the construction of said lines of railroad until they stopped so doing at the time and under the circumstances hereinafter stated.

Neither the said St. Paul and Pacific Company nor the said First Division Company have ever had any means that could be applied to the construction and equipment of said lines of railroad except those arising from the sale of the said issue of bonds.

If all said bonds had been sold and disposed of, as was designed and expected by every one interested in the enterprise of constructing said lines of railroad when such bonds were issued, amply sufficient means would thereby have accrued to said First Division Company to fully

construct and equip said lines of railroad in the time and manner required by law, and the failure to do so which occurred was solely owing to the failure, neglect, and refusal of the parties having the sale of such bonds in charge to negotiate the same.

The said issue of bonds was all placed for sale and negotiation in the hands of Lippman, Rosenthal & Co., bankers, doing business at Amsterdam, Holland, Europe.

The said Lippman, Rosenthal & Co. commenced to negotiate said bonds in the summer or fall of 1871, and continued to negotiate the same until the latter part of June or the fore part of July, A. D. 871,
when they utterly failed and refused to negotiate any more of the
210 same, and utterly failed and refused to return to said railroad companies, or to either of them, any of the bonds of said issue remaining unsold, all of which were, before Sept. 4, 1872, placed in their possession to be negotiated.

When said failure to negotiate said bonds occurred less than four miles of said lines of railroad had been completed, and both said companies were left wholly without means to pay for any work that should be thereafter done, or for any materials that should be thereafter furnished in the construction of said lines.

Nevertheless, the said Moorhead, although under the terms of the said contract between himself and the said First Division Company he was under no obligation to do so, in order to complete as much as possible of said lines of railroad in the time limited by law, caused the work of construction on said lines to continue, relying largely on his ability to sell such parts of said thirty-four thousand tons of iron rails as under the circumstances could not be used for laying down upon said lines, in order to pay for such work and materials he furnished.

Their work of construction was continued until the latter part of the month of September or the fore part of the month of October, 1872, when, after one hundred forty-three and one-half miles of said lines had been completed, the said work was stopped, and has never been resumed.

After the means of the said companies for the further prosecution of
work upon said lines of road had failed as has been hereinbefore
211 stated, the said Moorhead, in order to procure means to further prosecute said work, was compelled to and did sell and dispose of all the said thirty-four thousand tons of railroad iron except such portions of the same as were used in the construction of said lines, and except about nine hundred tons in quantity now lying at Duluth, and forming part of the four thousand eight hundred and sixty tons which the plaintiff's bill was filed to recover; which rails so remaining unsold are described as follows:

Clara and Carl	576
Lidsgalf	2,175
M. Lowerison	2,759

Said rails lastly above described were never in any manner sold or disposed of by the said Moorhead.

All the said rails so sold and disposed of were sold for their full value, and all the proceeds of such sales were faithfully applied by the said Moorhead to the payment for work done and materials furnished in the construction of said lines of railroad, after the exhaustion of the means of said companies as has been hereinbefore stated. After all the proceeds of said rails had been applied, when the said work of construction was stopped as has been hereinbefore stated, there still remained due and owing by the said First Division Company to the said Moorhead, for work done and materials furnished in such construction, more than the

sum of five hundred thousand dollars, no part of which has ever been
212 paid. The defendant in the plaintiff's bill B. S. Russell, during the time when the work of construction of the said lines of railroad was going on, was employed by the said Moorhead to receive and care for such of the said iron rails as should be shipped by the said Moorhead to the said port of Duluth, and all of the rails in the plaintiff's bill described were received and have been held by the said Russell in no other capacity than that of agent employee of the said Moorhead.

Among the rails so sold and disposed of by the said Moorhead were those described as follows, that is to say:

Per "Nancy M."	589 t.	12 cwt.	3 qr.	9 lbs.
Per "Presto"	280 t.	0 cwt.	0 qr.	21 lbs.
Per "F. Minde"	199 t.	19 cwt.	2 qr.	19 lbs.
Total	1,068 t.	12 cwt.	2 qr.	24 lbs.

The last described rails are situated at Duluth, and form a part of the four thousand eight hundred and sixty tons of rails which the plaintiff's bill was filed to recover.

The last described rails were so sold and disposed of by the said Moorhead to Vibbard, Foote and Co., a copartnership dealing in railway materials and supplies in the city of New York, and were afterwards sold and disposed of by the said Vibbard, Foote & Co. to Jay Cooke, McCulloch & Co., a copartnership then doing business at London, England, as bankers, and composed of Jay Cooke, Hugh McCullough, J. H. Puleston, Frank H. Evans, the said William G. Moorhead, Henry
D. Cooke, Pitt Cooke, Jay Cooke, jr., H. G. Fahenstock, and
213 George C. Thomas. After such sale by the said Vibbard, Foote & Co. to the said Jay Cooke, McCullough & Co., and in the month of September or in the month of October, 1873, the said Jay Cooke, McCulloch & Co., being indebted to the United States of America in the sum of six hundred thousand dollars and upwards, duly pledged and delivered all and singular the rails lastly hereinbefore described, together with other property, to the United States, as security for the payment of such indebtedness.

After the transactions hereinbefore stated had taken place, to wit, on November 26th, 1873, the said William G. Moorhead, together with Jay Cooke, Henry D. Cooke, Pitt Cooke, Jay Cooke, jr., H. C. Fahenstock, George C. Thomas, and James A. Garland, partners doing business under the firm name of Jay Cooke & Co., were, upon the petition of their creditors, before that time and on September 25, 1873, duly filed in the district court of the United States for the district of Pennsylvania, wherein the said Jay Cooke & Co. for many years prior thereto had been, and then were, carrying on business as bankers, duly adjudged bankrupts within the meaning of the statutes of the United States relating to bankruptcies.

Afterwards, to wit, on February A. D., 1874, this defendant was duly constituted and became sole trustee in bankruptcy of all the joint and separate estate of the said bankrupts, and ever since has been acting as such trustee.

214 The said indebtedness of the said Jay Cooke, McCulloch & Co. to the United States was never paid by that firm, and since this defendant has been trustee as aforesaid he has been compelled to pay, and has paid, to the United States the said indebtedness, out of moneys belonging to the separate estates in bankruptcy of the said Jay Cooke, William G. Moorhead, Henry D. Cooke, Pitt Cooke, Jay Cooke, jr.,

H. C. Fahenstock, and George C. Thomas, by reason of which payment this defendant has been subrogated to the rights of the United States in the said rails and other property so pledged to them, all of which will be required to reimburse this defendant as trustee as aforesaid for the moneys so paid out by him.

Wherefore, as to all the iron rails hereinbefore particularly described, this defendant prays that the plaintiff's bill be dismissed, and that this defendant be allowed his costs herein incurred.

EXHIBIT A.

This agreement, made and entered into this twelfth day of May, A. D. one thousand eight hundred and seventy-one, between the First Division of the Saint Paul and Pacific Railroad Company, party of the first part, and William G. Moorhead, esq., of Philadelphia, party
215 of the second part, witnesseth that the party of the second part undertakes, in consideration of the agreement hereinafter mentioned to be kept and performed by the party of the first part, to build and equip, as required by the laws of United States and of the State of Minnesota in relation thereto, and in accordance with the profiles and plans of the chief engineer of said company, the lines of said road from Sauk Rapids to Brainerd, and from some point on the branch lines of said road of the said party of the first part at or near the Saint Cloud station to Saint Vincent, all in the State of Minnesota, and equip the same with a sufficient amount of rolling stock; said work to be prosecuted as rapidly as can be done, with money furnished therefor by the party of the first part from the sale of its issue of bonds hereinafter mentioned.

In consideration of the foregoing undertaking on the part of the said party of the second part, and of the completion and equipment of the said lines of road in the manner hereinbefore specified, the said party of the first part agrees to pay to the party of the second part all the net proceeds of its issue of bonds, amounting to fifteen millions of dollars, such payments to be made as the work progresses, and upon the estimate of the chief engineer of the party of the first part.

In witness whereof the parties hereto have subscribed these presents, at the city of New York, on the day first above named, and the
216 said party of the first part hath also caused its seal to be hereto attached.

{ SEAL OF FIRST DIVISION COMPANY. }

GEORGE L. BECKER,
President of the First Division of the St. Paul and Pacific Railroad Company.
WM. G. MOORHEAD.

SMITH & EGAN, &
GILMAN, CLOUGH & LANE,
Sol'c's for Def't.

JAS. SMITH, JR.,
W. P. CLOUGH,
Of Counsel for Def't.

217 *Final decree.*

In U. S. circuit court, district of Minnesota, June term, 1877, Oct. 13, 1877.

JESSE P. FARLEY, RECEIVER,
vs.
CHARLES A. DE GRAFF, WILLIAM CROOKS, and Nicholas De Graff, partners as De Graff & Co., The Northern Pacific R. R. Co., The Lake Superior & Mississippi R. R. Co., B. S. Russell, G. W. Cass, receiver of the Northern Pacific R. R. Co., and C. W. Mead, general manager of the Northern Pacific R. R. Co., Jacob S. Wetmore, Thomas W. Pearsall, and Thomas W. Denny, trustees, et al.

This cause came on for final hearing, and was submitted to the court upon the pleadings and proofs on file, and the written stipulation of the parties, and being argued by counsel for the respective parties, and the court being fully advised, doth order, adjudge, and decree as follows: That the answer of the defendants Jacob S. Wetmore, Thos. W. Pearsall, and Thomas Denny, trustees, filed in the State court before the transfer of the cause to this court, praying for the sale and relief demanded and sought by the plaintiff Farley, stand as in
218 the nature of a cross-bill and be consolidated with the original bill, and all proofs and stipulations shall be applicable thereto. And it is further ordered, adjudged, and decreed that as to the said defendants De Graff & Co., a firm composed of Charles A. De Graff and William Crooks, who are the surviving members of the said firm of De De Graff & Co. that the complaint or bill of the said Farley, receiver, and the said cross-bill of the said Wetmore, Pearsall, and Denny, trustees, be, and the same is hereby, dismissed, neither party to recover costs against the other. It is also further ordered, adjudged, and decreed that the said Farley, as receiver, as against the defendant B. S. Russell, and against the defendant Edward M. Lewis, trustee in bankruptcy of William G. Moorhead and others, is entitled, for the benefit of the trust he represents, to all the iron rails in controversy herein not sold to De Graff & Co., and not pledged and sold to the Navy Department, which said iron rails, subject to the customs duties to the United States, thus decreed to the said Farley as receiver he is authorized to use in the construction of the said extension lines or to sell at the best prices and on the best terms practicable, and apply the net pro-
219 ceeds thereof to the credit of the mortgage, dated April 1, 1871, executed by the St. Paul & Pacific R. R. Co. to Horace Thompson, George L. Becker, and Wm. G. Moorhead, trustees, who in the said trust have been succeeded by the said Wetmore, Pearsall, and Denny as trustees, and which mortgage is now being foreclosed in this court, neither party as against the other to recover costs or damages.

It is further adjudged and decreed that all transfers of the 1,860 tons of iron in controversy herein claimed by defendant Russell from William G. Moorhead to said Russell, except transfers relating to the iron pledged to the Navy Department, are null and void, and that said Russell has no right, title, or interest therein as against the said Farley and said trustees.

It is further ordered, adjudged, and decreed that said Farley has no

right, title, or interest in the iron transferred to the Navy Department, and which is claimed herein by defendants Russell and Lewis; and it is further adjudged that neither the plaintiff nor the defendant Russell s entitled to costs or damages herein.

To ascertain the amount of iron hereby decreed to the said,
220 Farley H. E. Mann, esq., is hereby appointed master to take testimony and report, and the power is reserved to make all further orders necessary to effectuate this decree to secure the delivery of said iron to the said Farley in pursuance of this decree.

It is further ordered and decreed that as to all the defendants other than the said Russell and Lewis the bill of the said Farley and the said cross-bill of said trustees Wetmore, Pearsall, and Denny be, and the same is hereby, dismissed neither party to recover costs as against the other.

The defendant B. S. Russell prays an appeal from this decree to the Supreme Court of the United States, and said appeal is hereby allowed.

JOHN F. DILLON, *Judge.*

221 In the circuit court of the United States for the district of Minnesota.

JESSE P. FARLEY, RECEIVER, &C., *vs.* C. A. DE GRAFF ET ALS. } In equity.

It is hereby stipulated between the solicitors for the plaintiff and the defendants De Graff & Co. that the annexed are true copies of the agreement, lease, and mortgage referred to in the pleadings in this action, and may be read in evidence on the hearing herein by either party; and it is admitted that the said mortgage was filed for record and recorded in the office of the secretary of state of Minnesota on the thirtieth (30th) day of August, 1871, and that the said lease was filed for record and recorded in the office of the said secretary of state on the thirty-first (31st) day of August, 1871.

Dated Jan'y, 1877.

I. V. D. HEARD,
Solicitor for Plaintiff.
GILMAN, CLOUGH & LANE,
Solicitors for De Graff & Co.
GEO. L. & C. E. OTIS,
Att'ys for Jacob S. Wetmore et al., Trustees, &c.
222 SMITH & EGAN,
Solicitors for B. S. Russell & Lewis, Def'ts.

223 Articles of agreement made the first day of April, in the year of our Lord one thousand eight hundred and seventy-one, by and between the First Division of the Saint Paul and Pacific Railroad Company, a corporation of the State of Minnesota, of the first part, and the Saint Paul and Pacific Railroad Company, a corporation of the same State, of the second part, witnesseth:

That the said parties of the first and second parts have promised and agreed, and by these presents do covenant, promise, and agree, to and with each other as follows, to wit:

I. The said party of the first part has agreed, and does hereby agree, to assume and undertake to construct the lines of railroad which the said party of the second part is by law authorized to construct, main-

tain, and operate in the said State of Minnesota, from some point at or near Saint Cloud, county of Stearns, to Saint Vincent, in the county of Pembina, being a distance of two hundred and ninety-three (293) miles, more or less, and from Watab, in the county of Benton, to Brainerd, in the county of Crow Wing, a distance of fifty-five (55) miles, more or less; and to complete, equip, and put the same and every part thereof in good running order and condition within the time and in the manner required by the acts of Congress granting lands to the Territory and State of Minnesota to aid in the construction of said railroads, to wit, an act of the said Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama to aid in the construction of certain railroads in said State," approved March 3d, 1857, and a certain other act thereof entitled "An act extending the time for the completion of certain land-grant railroads in the State of Minnesota and Iowa, and for other purposes," approved March 3d, 1865, and a certain other act thereof entitled "An act authorizing the Saint Paul and Pacific Railroad Company to change its lines in consideration of a relinquishment of lands," approved March 3d, 1871, and the acts of the legislature of said State of Minnesota executing the trust created by said acts of Congress, or in relation to the disposition of the lands therein mentioned, to wit, an act of the said legislature entitled "An act to facilitate the construction of the Minnesota and Pacific Railroad, and to amend and continue the act of incorporation relating thereto," approved March 10th, 1862, and acts amendatory thereof or relating to the railroad therein described, approved, respectively, February 6th, 1865, March 4th, 1864, and March 2d, 1865, or such other acts as shall or may hereafter be passed by the said Congress and the said legislature respectively, so that the said party of the second part shall and may become vested under the said acts with the legal title to all and singular the lands thereby granted to aid in the construction of the said railroads, or either of them; that is to say, the said party of the first part shall and will, within the time aforesaid, and so as to perfect the title of the said party of the second part to the said lands, construct and grade the said railroads in sections of ten miles; lay the same with iron rails, as required by law, with all necessary switches, side tracks, and turnouts; erect and build, upon and in connection therewith, all necessary bridges, viaducts, culverts, fences, and other structures, and all depots, stations, station-houses, car-houses, engine houses, freight-houses, wood-houses, machine and other shops, and put upon and appropriate to the use of the said railroads, free from all incumbrances, except the deed of trust or mortgage hereinafter mentioned, all locomotives, tenders, passenger, baggage, freight, and other cars, and other rolling stock which may be necessary and proper to accommodate the business thereof, and in all respects construct, complete, furnish, and equip the said railroads, so that the same shall be, in respect to the road bed, rails, and superstructure thereof, and, so far as the business shall require, in respect to the equipment thereof, and the facilities in the transaction of business, in good order and condition, and equal in all respects to the railroad heretofore constructed by the said party of the first part between St. Paul and Watab; and the said party of the first part undertakes such construction and equipment of said railroads on the following terms and conditions, that is to say:

The said party of the first part shall execute, issue, and offer for sale

and negotiation a series of bonds, amounting in the aggregate to fifteen millions of dollars, and consisting of fifteen thousand bonds of one thousand dollars each, and bearing date the first day of April, in the year one thousand eight hundred and seventy-one, and payable on the first day of January, in the year one thousand nine hundred and one, in lawful money of the United States in the city of New York, or in British pound sterling in the city of London, at the rate of four British shillings per dollar, at the option of the holder, and bearing interest
226 at the rate of seven per centum per annum, payable semi-annually in the lawful money of the United States if demanded in New York, or in British pounds sterling if demanded in London aforesaid, at the option of the holder of the coupons representing the same; and the said party of the second part shall and will, for the benefit of the parties who may become holders of the said bonds, assume and secure the payment thereof by the execution and delivery to trustees of a deed of trust or mortgage of and upon all and singular the said railroads so to be constructed, with their respective equipments, appurtenances, and franchises, and also of and upon all right, title, and interest now held and hereafter to be acquired by the said party of the second part in and to the lands granted, or to be granted, by Congress as aforesaid to aid in the construction of said railroads, or either of them, which deed of trust or mortgage shall be in the most approved form for the purpose of securing the payment of said bonds and all interest to accrue thereon; and subject to the said deed of trust or mortgage, but not otherwise, the said party of the second part shall execute and deliver to the said party of the first part, and the said party of the first part shall receive and accept, a lease of said railroads for the term of ninety-nine years, the said party of the first part agreeing to operate, maintain, and supply, from time to time, with all necessary and proper equipment, the said railroads, and to apply, semi-annually, any and all net earnings and income of the said railroads to the payment, as the same shall fall due, of the interest on said bonds, and if, in any year, after paying in full out of the said net earnings all interest on said bonds which
227 shall have become due, a balance of the said net earnings shall remain, to pay over the same to the trustees, for the time being, under the deed of trust or mortgage aforesaid securing the payment of said bonds, to be by the said trustees used and applied in the payment of the interest on said bonds, and the redemption of the principal thereof, in the manner provided in said deed of trust or mortgage in reference to the net proceeds of the sales of the lands granted by Congress to aid in the construction of said railroads therein mentioned; provided, however, that when all the bonds aforesaid shall have been fully paid and satisfied, principal as well as interest, or due provision made in money for the payment thereof, then and from thenceforth all net earnings of the said railroads, or of either of them, remaining in any year after paying the expenses of operating and maintaining the said railroads during such year, and carrying on the business thereof, shall, within a reasonable time after the close of such year, be paid over to the said party of the second part, to an amount equal, so far as such net earnings may suffice, to a dividend of six per centum upon the whole aggregate amount of the capital stock of the said party of the second part now issued and outstanding.

II. The said party of the second part agrees to suffer and permit the said party of the first part to enter into and upon the said railroads for the purpose of constructing, completing, and equipping the same as aforesaid, and for that purpose to exercise all the rights, privileges,

and franchises of the said party of the second part in respect thereto; and the said party of the second part promises and agrees to execute upon said railroads, and upon its title and interest in the
228 lands granted, or to be granted, by Congress, as aforesaid, a deed of trust or mortgage, as aforesaid, and subject to such deed of trust or mortgage, and to all and singular the provisions and requirements thereof, to lease the said railroads to the said party of the first part, and suffer and permit the said party of the first part to operate, maintain, and enjoy the said railroads for and during the said term of ninety-nine years, applying the net earnings or income thereof as hereinbefore stated. In witness whereof the said parties of the first and second parts have caused their respective corporate seals to be hereunto affixed, and the same to be attested by the signatures of their respective presidents and secretaries, the day and year first above written.

GEORGE L. BECKER,
President of the First Division of the St. Paul & Pacific Railroad Company.

[SEAL.] SAM'L S. BREED,
Secretary.

[SEAL.] WALTER HINCHMAN,
Secretary St. Paul & Pacific Company.

Signed, sealed, and delivered in presence of—
CHARLES NETTLETON.

229 STATE OF NEW YORK,
City & County of New York, ss:

Be it remembered that on this 14th day of July, A. D. 1871, before me, the undersigned, Charles Nettleton, a commissioner resident in the city of New York duly commissioned and qualified by the executive authority and under the laws of the State of Minnesota to take the acknowledgement of deeds, &c., personally appeared Walter Hinchman, the secretary of the St. Paul & Pacific Railroad Company, to me personally known to be such, who being by me duly sworn, did depose and say that he resided in the city, county, and State of New York; that he was the secretary of the said the St. Paul & Pacific Railroad Company; that he knows the corporate seal of the said company; that the seal affixed to the foregoing instrument was such corporate seal; that it was so affixed by order of the board of directors of said company, and that he, the said Walter Hinchman, signed his name thereto by the like order as secretary of the said company; and the said Walter Hinchman also acknowledged to me that he had executed the said instru-
230 ment of writing freely and voluntarily, and as the free act and deed of the said the St. Paul & Pacific Railroad Company, and for the uses and purposes therein mentioned. And at the same time and place also personally appeared before me George L. Becker, the president of the First Division St. Paul & Pacific Railroad Company, and Samuel S. Breed, the secretary of the same company, to me respectively personally known to be such, who being by me severally duly sworn, did depose and say that he, the said George L. Becker, resided in the city of St. Paul and State of Minnesota; that he, the said Samuel S. Breed, resided in the said city of St. Paul; that he, the said George L. Becker was the president, and he said Samuel S. Breed was the secretary of the said the First Division St. Paul & Pacific Railroad Company; that they knew the corporate seal of the said com-

pany; that the seal affixed to the foregoing instrument was such corporate seal; that it was so affixed by order of the board of directors of said company; and that they, the said George L. Becker and Samuel S. Breed, signed their names thereto by the like order as presi-
231 dent and secretary of said company respectively; and the said George L. Becker and Samuel S. Breed also severally acknowledged to me that they had executed the said instrument of writing freely and voluntarily, and as the free act and deed of the said the First Division St. Paul & Pacific Railroad Company, and for the uses and purposes therein mentioned.

In witness whereof I hereunto set my hand and affix my official seal, the 14th day of July, A. D. 1871.

[SEAL.]

CHARLES NETTLETON,
Commissioner for Minnesota in New York,
117 *Broadway, New York City.*

232 This indenture, made the first day of April, in the year of our Lord one thousand eight hundred and seventy-one, between the Saint Paul and Pacific Railroad Company, a corporation of the State of Minnesota, of the first part, and Horace Thompson and George L. Becker, of Saint Paul, in the said State, and William G. Moorhead, of Philadelphia, in the State of Pennsylvania, of the second part:

Whereas, the said St. Paul and Pacific Railroad Company is a corporation of the State of Minnesota, duly created and organized under the laws thereof, and particularly under a certain act of the legislature of said State entitled "An act to facilitate the construction of the Minnesota and Pacific Railroad, and to amend and continue the act of incorporation relating thereto," approved March 10th, 1862, and acts amendatory thereof, or relating to the railroad therein described, approved, respectively, February 6th, 1864, March 4th, 1864, and March 2d, 1865.

233 And whereas the said company is duly authorized and empowered by law to construct, maintain, and operate the railroads in the said State of Minnesota hereinafter mentioned and described, as the branch lines of the Saint Paul and Pacific Railroad, to be constructed from Saint Cloud to Saint Vincent, and from Watab to Brainerd, in the said State; and for the construction, maintenance, and equipment thereof to borrow money and enter into any and all agreements, and assume any and all liabilities, which it may deem proper, and particularly to execute, acknowledge, and deliver a deed of trust or mortgage upon the said branch lines of railroad, and the land grants connected therewith, in the manner and form of this indenture.

And whereas the Congress of the United States, heretofore, to wit, by a certain act thereof entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama to aid in the construction of certain railroads in said State," approved March 3d, 1857, and by a certain other act thereof entitled "An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes," approved March 3d, 1865, granted to the said State of Minnesota certain lands for the purpose of aiding in the construction of railroads from Saint Cloud aforesaid, by way of Crow Wing, to Saint Vincent aforesaid, and also from Saint Cloud to the waters of Lake Superior.

And whereas the said State of Minnesota, by the legislative acts

thereof aforesaid, granted the said lands applicable to the con-
234 struction of said railroads from Saint Cloud to Saint Vincent, and from Saint Cloud to the waters of Lake Superior, to the said Saint Paul and Pacific Railroad Company, as by reference to said legislative acts will more fully and at large appear.

And whereas the Congress of the United States aforesaid, by another act thereof, to wit, an act entitled "An act authorizing the St. Paul and Pacific Railroad Company to change its lines, in consideration of a relinquishment of lands," approved March 3d, 1871, enacted and declared: "That the Saint Paul and Pacific Railroad Company may so alter its branch lines that, instead of constructing roads from Crow Wing to Saint Vincent, and from Saint Cloud to the waters of Lake Superior, it may locate and construct, in lieu thereof, a line from Crow Wing to Brainerd, to intersect with the Northern Pacific Railroad, and from Saint Cloud to a point of intersection with the line of the original grant at or near Otter Tail, or Rush Lake, so as to form a more direct route to St. Vincent, with the same proportional grant of land, to be taken in the same manner, along the said altered line, as is provided for the present lines by existing law; provided, however, that this change shall in no manner enlarge said grant, and that this act shall only take effect upon the condition of being in accord with the legislature of the State of Minnesota, and upon the further condition that proper releases shall be made to the United States, by said company, of all lands along said abandoned lines from Crow Wing to Saint Vincent, and from Saint Cloud to Lake Superior, and that upon the execution of said releases, such lands so released shall be considered as immediately restored to market without further legislation."

235 And whereas the act of said Congress last aforesaid was in conformity with the legislation of the State of Minnesota, and particularly with the act thereof aforesaid approved February 6th, 1864.

And whereas the said company has duly accepted the act of Congress last aforesaid, and duly resolved to alter and relocate its branch lines of railroad as therein provided, and to execute and deliver the releases of the lands along said abandoned route therein mentioned.

And whereas the said party of the first part has entered into a certain contract, bearing even date herewith, for the construction and equipment of said railroads from Saint Cloud to Saint Vincent, and Watab to Brainerd, with a certain other company of the State of Minnesota, known as the First Division of the Saint Paul and Pacific Railroad Company, being a corporation created and organized under an act of the legislature of the said State entitled "An act to amend the charter of the Saint Paul and Pacific Railroad Company," approved February 6th, 1864; and in and by such contract the last mentioned company has agreed to loan and advance to the said party of the first part, or for its use and benefit, in the construction and equipment of said railroad, the sum of fifteen millions of dollars, in bonds of the said company, payable and secured to be paid as hereinafter described; and the said party of the first part has agreed to assume and secure the payment of the said bonds according to the terms thereof.

And whereas, pursuant to such construction contract, and in due conformity therewith, the said First Division of the Saint Paul and Pacific Railroad Company has duly resolved to execute and issue its certain bonds or obligations, of one thousand dollars each, payable to
236 the said parties of the second part thereto, as trustees, or to bearer, on the first day of January, in the year of our Lord one thousand nine hundred and one, and bearing interest at the rate of sev-

en per centum per annum, payable semi-annually, on the first days of January and July in each year, in the lawful money of the United States if demanded in New York, or in British pounds sterling, at the rate of four shillings British money per dollar, if demanded in London, at the option of the holder.

And whereas the said bonds, or as many thereof as may be necessary, are to be issued and negotiated for the purpose of procuring means to construct and equip the said lines of railroad, and are to be equally and r itably secured hereby, without discrimination or preference between them on account of the times of actual issue or negotiation; and whereas the said bonds are all of like tenor and date, and in the form following:

UNITED STATES OF AMERICA. $1,000. STATE OF MINNESOTA.

(Vignette.) (Vignette.)

FIRST MORTGAGE BOND.

Upon 348 miles of railroad and 2,217,200 acres of land.

No.

Issued by

THE FIRST DIVISION OF THE ST. PAUL AND PACIFIC RAILROAD COMPANY.

To construct roads from St. Cloud to St. Vincent, and from Watab to Brainerd.

237 Know all men by these presents, that the First Division of the St. Paul and Pacific Railroad Company is indebted to Horace Thompson and George L. Becker, of St. Paul, and William G. Moorhead, of Philadelphia, trustees, or bearer, in the sum of one thousand dollars, lawful money of the United States of America, which said sum the said company hereby promises to pay to the said trustees, or to the bearer hereof, on the first day of January, in the year one thousand nine hundred and one, in the lawful money aforesaid at its office or agency in the city of New York, or in British pounds sterling, at the rate of four shillings per dollar, at the agency of the said company in the city of London, England, at the option of the holder, with interest on the said principal sum at the rate of seven per cent. per annum, payable semi-annually, on the first days of January and July in each year, in the lawful money aforesaid on presentation and surrender of the coupons hereto annexed, as they severally become due, at the said office or agency in New York, or payable in British pounds sterling, at the rate of four shillings for each dollar, on presentation and surrender of such coupons, respectively, at the banking house of Robert Benson & Co., in London, England, at the option of the holder, which payment of interest shall, in all cases, be made without deduction or abatement of any income or other tax imposed, or to be imposed, by the Government of the United States, or any law thereof, and which the said company lawfully might deduct from such interest to pay over to any officer of said government; it being understood that such taxes are to be paid by the said company in addition to such interest. And it is hereby expressly declared and agreed that, in case default shall be made in the

payment, as aforesaid, of any semi-annual installment of interest
238 on this bond, and such installment of interest shall remain unpaid and in arrear for the period of six months after the same shall have become due and been demanded, the principal of this bond, as well as of all the bonds of the series of which this is one, shall become and be due and payable immediately, but subject, nevertheless, to the provisions in that behalf of the deed of trust or mortgage hereinafter mentioned.

This bond is one of a series of fifteen thousand bonds of like tenor and date, numbered consecutively from 1 to 15,000, inclusively, and amounting, in the aggregate, to fifteen millions of dollars, and the payment of the principal and interest whereof is secured by a certain deed of trust or mortgage, bearing even date herewith, duly executed and delivered by the Saint Paul and Pacific Railroad Company (being the corporation owning the railroad for the construction of which these bonds are issued) to the said Horace Thompson, George L. Becker, and William G. Moorhead, trustees, and which conveys to the said trustees certain railroads which the said Saint Paul and Pacific Railroad Company is authorize to construct and operate in the said State of Minnesota, to wit, a railroad from, at, or near Saint Cloud to Saint Vincent, being a distance of two hundred and ninety-three (293) miles, more or less, and a railroad from Watab to Brainerd, being a distance of fifty-five (55) miles, more or less, together with the equipments and appurtenances of the said railroads, respectively, and the rights, privileges, and franchises thereunto respectively appertaining; and which conveys also to the said trustees all the right, title, and interest which the company last aforesaid now has, or shall or may hereafter acquire, by
239 the construction of said railroads, or any part thereof, or otherwise, in, to, or concerning certain lands situate in the said State which were heretofore granted by the Congress of the United States to aid in the construction of such railroads, by acts of the said Congress approved, respectively, March 3d, 1857, March 3d, 1865, and March 3d, 1871, the extent and aggregate area of such lands to which said company will become entitled by the construction of said railroads under existing legislation being estimated at two millions two hundred and seventeen thousand and two hundred (2,217,200) acres, more or less.

This bond shall pass by delivery, unless registered in the name of the owner on the books of the company in New York or London, but after a registration of ownership, certified hereon by the transfer agent or officer of the company, no transfer hereof, except upon the books of the company, shall be valid, unless the last preceding transfer shall have been to bearer; but this bond shall continue subject to successive registration of ownership and transfers to bearer at the option of each holder.

This bond is made, by the terms of the deed of trust or mortgage aforesaid, receivable at par in payment for any and all lands embraced in said deed which may be sold by the said Saint Paul and Pacific Railroad Company in conformity therewith. This bond shall not become valid or obligatory until authenticated by a certificate endorsed hereon and duly signed by the trustees under said deed.

In witness whereof the said company has caused its corporate seal to be hereunto affixed, and the same to be attested by the signatures of its president and secretary, and has likewise caused the coupons
240 hereto annexed to be signed by its secretary, this first day of April, one thousand eight hundred and seventy-one.

, *President.*
, *Secretary.*

Now, therefore, this indenture witnesseth that the Saint Paul and Pacific Railroad Company aforesaid, being the party of the first part hereto, in consideration of the premises and of the sum of one dollar to the said company duly paid, at or before the ensealing and delivery of these presents, by the said parties of the second part, the receipt whereof is hereby acknowledged, has promised and agreed, and by presents does promise and agree, to and with the said parties of the second part, for the benefit of any and all persons who shall or may become holders for value of the bonds aforesaid, or any of them, or of any coupons thereunto annexed, that the said Saint Paul and Pacific Company, its successors or assigns, shall and will well and truly pay the said bonds, and each of them, and all interest to accrue upon the said bonds, or any of them, when the same shall become due, or cause the same to be paid unto the parties entitled thereto, according to the tenor of said bonds, respectively, and of the respective coupons thereunto annexed; but nothing herein contained shall impair, or in any manner whatsoever affect, the liability of the First Division of the Saint Paul and Pacific Railroad Company upon the said bonds and coupons to the holders thereof.

And this indenture further witnesseth that for and in consid-
241 eration of the premises, and of the sum of one dollar to it duly paid as aforesaid, the said party of the first part to these presents, in order the better to secure the payment of the principal of the said bonds, and all interest thereon as the same shall become payable, according to the tenor of said bonds and the terms of the coupons thereto respectively annexed, has granted, bargained, and sold, and by these presents does grant, bargain, sell, convey, and transfer, unto the said parties of the second part, as joint tenants, and not as tenants in common, and to the survivors and survivor of the said parties of the second part, and the heirs and assigns of such survivor, all and singular that certain branch line of railroad of the said party of the first part, or which the said party of the first part is authorized to construct, and which is to be constructed and run from some point at or near the town of Saint Cloud, in the county of Stearns, to the town of Saint Vincent, in the county of Pembina, and State of Minnesota, being a distance of two hundred and ninety-three (293) miles, more or less; and also all and singular that certain other line of railroad of the said party of the first part, or which the said party of the first part is authorized by law to construct, and which is to be constructed and run from Watab, in the county of Benton, by way of Crow Wing, to Brainerd, in the county of Crow Wing, to intersect with the Northern Pacific Railroad, being a distance of fifty-five (55) miles, more or less, as contemplated by the said act of Congress approved March 3, 1871, together with the equipments and appurtenances of the said railroads, respectively, and the rights, privileges, and franchises thereunto respectively belonging or in any wise appertaining, or which shall or may at any time hereafter there-
242 unto belonging or in anywise appertaining; and also all right, title, and interest which said party of the first part now has, and all right, title, and interest which the said party of the first part, its successors or assigns, shall or may at any time hereafter acquire, by reason of the construction of said railroads, or of either or of any part of either thereof, or otherwise, in, to, or concerning the lands situate, lying, and being in the State of Minnesota, which are embraced, or intended to be embraced, in the grants aforesaid, or either of them, made by the Congress of the United States to the former Territory and present State of Minnesota, by the acts of said Con-

gress hereinbefore mentioned, or either of them, and which have been granted by said State to the party of the first part, or shall or may be granted or conveyed to the said party of the first part, its successors or assigns, to aid in the construction of the said lines of railroad, or of either, or of any part of either, thereof, including in the premises hereby conveyed, and it being the true intent of these presents to convey the road-beds of the said railroads, respectively, and all tracks, bridges, viaducts, culverts, fences, depots, stations, station-houses, engine-houses, car-houses, freight-houses, wood-houses, machine shops and other shops, and all other structures, buildings, and materials whatsoever, placed, and to be placed, on the said railroads, respectively, or on either, or any part of either, thereof, or acquired, or to be acquired, for the use of the same, and also all locomotives, tenders, passenger, baggage, freight, cattle, and other cars, and all other rolling-stock whatsoever, and all machinery, tools, and implements, fuel, and materials for constructing, operating, repairing, or replacing the said railroads, or either, or any part of either, thereof, or any of the equipments
243 or appurtenances of the said railroads, or of either, or any part of either, thereof, now held by the said party of the first part, or hereafter to be acquired by the said party of the first part, its successors or assigns, together with all and singular the tenements, hereditaments, and appurtenances to the said railroads, lands, and premises, or any part thereof, belonging, or in any wise appertaining; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, in, to, and concerning the same, and each and every part and parcel thereof, with the appurtenances; to have and to hold the said railroads, lands, and premises, unto the said parties of the second part, as joint tenants, and not as tenants in common, and unto the survivors and survivor of the said parties of the second part, and the heirs and assigns of such survivor, forever; but in trust, nevertheless, to and for the uses and purposes, and with the powers and authorities hereinafter mentioned and set forth, that is to say:

ARTICLE FIRST. Until default shall be made by the said First Division of the Saint Paul and Pacific Railroad Company, its successors or assigns, in the payment of either the principal or interest of the said bonds, or some one of them, the said party of the first part, its successors and assigns, shall be suffered and permitted to possess, manage, operate, and enjoy the said railroads, respectively, with the equipments and appurtenances thereof, and the franchises appertaining thereto, and to receive,
take, and apply to its and their own use the tolls, incomes, rev-
244 enues, rents, issues, and profits thereof, in the same manner and with the same effect as if this deed had not been made.

ARTICLE SECOND. In case default shall be made in the payment of any interest to accrue on any of the aforesaid bonds issued or to be issued by the First Division of the Saint Paul and Pacific Railroad Company, when such interest shall become payable according to the tenor of such bond or the terms of any coupon thereto annexed, and such default shall continue for the period of three months, or in case default shall be made in the payment of the principal of any of said bonds, or in case default shall be made in the observance or performance of any other matter or thing in these presents mentioned and agreed or required to be observed and performed by the party of the first part, its successors or assigns, or by the said First Division of the Saint Paul and Pacific Railroad Company, its successors or assigns, and such default shall continue for the period of six months, then and from thenceforth,

and in either of such cases, it shall be lawful for the said parties of the second part, being the trustees under these presents, or for the survivor or survivors of said trustees, or their or his successors or successor, personally, or by their or his attorneys or agents, to enter into and upon all and singular the railroads and premises hereby conveyed, or intended so to be, or any part thereof, and from thenceforth to have, hold, possess, and use the said railroads and premises, and each and every part and parcel thereof, then subject to the lien of these presents, operating and conducting the business of the said railroads, respectively, by their or his superintendents, managers, receivers, and servants, or other
245 attorneys or agents; and making, from time to time, all repairs and replacements, and such useful alterations, additions, and improvements thereto as may seem to them or him to be judicious; and to collect and receive all tolls, fares, freights, incomes, rents, issues, and profits of the same, and of every part thereof; and after deducting the expenses of operating the said railroads, respectively, and conducting the business thereof, and of all the said repairs, replacements, alterations, additions, and improvements, and all payments which may be made or may be due for taxes, assessments, charges, or liens, prior to the lien of these presents upon the said premises, or any part thereof, as well as just compensation for their or his own services, and for the services of such attorneys and counsel as shall have been by him or them employed, to apply the moneys arising as aforesaid to the payment of interest on the said bonds, in the order in which such interest shall have become and shall become due, ratably to the persons holding the coupons evidencing the right to such interest; and if, after paying in full the interest which shall have accrued on the said bonds, a surplus of the moneys arising as aforesaid shall remain, and the principal of said bonds shall not be due, nor such surplus, or any part thereof, required in the judgment of said trustees for the protection of the property, or to provide for the installment of interest next thereafter to fall due, the same shall be paid over to the said party of the first part; but in case the principal of said bonds, or any of them, shall have become due, the surplus arising as aforesaid shall be reserved, to be applied to the payment of said bonds, upon the sale of the said railroad and premises, as provided in the next following article of these presents.

246 ARTICLE THIRD. In case default shall be made in payment of interest on said bonds, or any of them, as aforesaid, and shall continue as aforesaid, or in case default shall be made in the payment of the principal, or any part thereof, of the said bonds, or any of them, it shall be lawful for the said trustees, or for the survivors or survivor of the said trustees, or for their or his successor or successors in the trust by these presents created, to enter into and upon all and singular the railroads and premises aforesaid, and after such entry, or after other entry, or without entry, personally, or by their or his attorneys or agents, to sell and dispose of the said railroads, and of all and singular the property, rights, and franchises hereinbefore conveyed, or intended so to be, and which shall be then subject to the lien of these presents, at public auction, either in the city of New York or the city of St. Paul, aforesaid, or at such place along the line of either of said railroads, and within the State of Minnesota, as the said trustees, or the survivors or survivor of them, or their or his successors or successor in said trust, shall designate; and at such time as they or he shall appoint, having first given notice of the time and place of such sale by advertisement published not less than three times a week, for six successive weeks, in one or more newspapers in the city of New York, and also published not less than

three times in each week, for six weeks, in one or more newspapers in the city of St. Paul, and also in the city of London, and after such notice, it shall be lawful for the said trustees or trustee to make such sale, or to adjourn the said sale from time to time, in their or his discretion, and, if so adjourning, to make the same, without further notice, at
247 the time and place to which the same may be so adjourned, and to make and deliver to the purchaser or purchasers of the said railroad, lands, and premises, or any part thereof, good or sufficient deed or deeds in the law for the same, in fee simple; which sale, made as aforesaid, shall be a perpetual bar, both in law and equity, against the said party of the first part, its successors and assigns, and all other persons claiming or to claim the said premises, or any part or parcel thereof, by, from, through, or under the said party of the first part, its successors or assigns. And after deducting from the proceeds of such sale just allowances for all expenses thereof, including attorneys' and counsel fees, and all other expenses, advances, or liabilities which may have been made or incurred by the said trustees or trustee in operating or maintaining the said railroads and premises, or in managing the business thereof, it shall be lawful for the said trustees or trustee, and it shall be their or his duty, to apply the residue of the moneys arising from such sale to the payment of the principal and accrued and unpaid interest on all the said bonds which shall then be outstanding, without discrimination or preference as between principal and accrued and unpaid interest, or as between the holders of said bonds or of any coupons issued therewith, but equally and ratably to all such bond and coupon holders.

And it is hereby declared and agreed that the receipt of the said trustees shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase money, and that after payment of such purchase money, and having such receipt, the said purchaser or purchasers shall not be obliged to inquire into the application of such purchase money upon or for the trusts or purposes of these
248 presents, or be in any manner whatsoever answerable for any loss, misapplication, or non-application of such purchase money, or of any part thereof, or be obliged to inquire into the necessity, expediency, or authority of or for any such sale.

ARTICLE FOURTH. At any public sale of the said railroads and property, or any part thereof, whether made by virtue of the power hereinbefore granted or by judicial authority, the trustees hereunder for the time then being may bid for and purchase, or cause to be bid for and purchased, the property so sold, or any part thereof, in behalf of all the holders of bonds secured by this instrument and then outstanding, in the proportion of the respective interests of such bondholders, at a reasonable price, if but a portion of said property shall be sold, and if the entire railroad and property shall be sold, then at a price not exceeding the whole amount of said bonds then outstanding, with the interest accrued thereon and the expenses of such sale.

ARTICLE FIFTH. In case default shall be made in the payment of any half yearly installment of interest on any of the said bonds, when such interest shall become payable according to the tenor of said bond or of any coupon thereto annexed, and such installment of interest shall remain unpaid and in arrear for a period of six months after the same shall have been demanded and become payable as aforesaid, then and from thenceforth the principal sum of each of the bonds aforesaid shall, at the option of the trustees thereunder, become and be immediately due and payable, notwithstanding that the time limited in
249 the said bonds for the payment thereof may not then have

elapsed; but a majority in interest of the holders of all the bonds aforesaid which shall be then outstanding, and upon which default in the payment of interest shall have been made and be continuing, *and* shall have the power, by an instrument in writing under their hands and seals, or by a vote at a meeting duly convened and held as hereinafter provided, at any time before the actual payment and acceptance of the interest in arrear, to instruct the trustees to declare the said principal due, or to waive the right so to declare, on such terms and conditions as such majority in interest shall prescribe; and such majority in interest may, by such instrument in writing, or such vote, annul or reverse any declaration of the trustees in respect to said bonds becoming or not becoming immediately payable; provided always that no act or omission either of the trustees or the bondholders in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent default.

ARTICLE SIXTH. The trustees hereunder shall, at all times during the continuance of the trust hereby created, have full power and authority, to be exercised in their own discretion, and not otherwise, to release and convey to any party who may be designated, in writing, by the said party of the first part, its successors or assigns, to receive the same, or to release from the lien and operation of these presents in such other manner as they may deem proper, any portion of the premises hereinbefore granted which may be appurtenant to either of the said railroads, but which, in the judgment of the said trust-
250 ees, shall be unnecessary for use in connection therewith, and which shall have been acquired or held for stations, depots, shops, or other buildings, or for a supply of fuel, gravel, or other material, and also to convey or release as aforesaid, on like request, any lands not occupied by the track which may become disused by reason of a change of the location of any station-house, depot, shop, or other building connected with either of the said railroads, and such lands occupied by the track and adjacent to such station-house, depot, shop, or other building, as the said party of the first part, its successors or assigns, may deem it expedient to disuse or abandon by reason of such change; and they may consent to any changes in the location of any depot or other building which, in their judgment, shall have become expedient, and make and deliver the instruments necessary or proper to carry the same into effect; provided always that any and all lands and premises which shall be acquired for permanent use, in substitution for any so released, shall be conveyed to the trustees upon the trusts of these presents, and that the proceeds of any and all lands and premises for which others shall not, within a reasonable time, be required, shall be paid over to the said trustees, to be by them invested in the purchase of the bonds aforesaid, in the manner hereinafter provided, which bonds shall, when so purchased, be cancelled and surrendered to the party of the first part, its successors or assigns, and the trustees shall also have full power to allow the said party of the first part, its successors or assigns, from time to time, to dispose, according to its or their discretion, of such portions of the equipment, machinery, and implements which
251 shall be at any time held or acquired for the use of either of the said railroads, but which shall have become unfit or unnecessary for such use; it being provided, however, that any and all new or other equipment, machinery, and implements which may be acquired in substitution for any so released shall, by virtue and force hereof, become and be, immediately upon the acquisition of the same, subject

to the lien and operation of these presents, without any new conveyance or transfer, or other act or ceremony whatever; and the proceeds of all sales of equipment or other personal property which may not be reinvested in new equipment, machinery, or implements, for use upon or in connection with said railroad, shall be paid over to the said trustees, to be by them applied, as hereinafter provided, in regard to the proceeds of the sales of lands.

ARTICLE SEVENTH. The said party of the first part, its successors or assigns, shall and will, as soon as conveniently practicable after the date hereof, cause all and singular the lands granted as aforesaid to aid in the construction of said railroads to be carefully valued and appraised by one or more competent persons, in convenient sections, divisions, or parcels, for sale to emigrants and actual settlers; and in such appraisement any and all lands containing, or supposed to contain, coal or iron, or any valuable mineral substance, shall be distinguished from those which are classed as agricultural or pastoral, and shall cause a full and accurate list and description of said lands and premises, containing, opposite each appraised section, division, or parcel, the value put upon the same, to be deposited with each of the said trustees, certified under the hands and seals of the appraisers, which appraisement shall be
252 subject to the approval of said trustees, or a majority of them, and such statement and appraisal may, with the consent of them, or a majority of them, be from time to time revised, altered, and corrected, a statement being in each case filed as aforesaid; and the said party of the first part, its successors or assigns, may at any time in its or their own discretion, and not otherwise, contract for the sale of any section, division, or parcel of said lands so appraised, at a price not less than the appraised value thereof, according to the last preceding statement of such value filed with said trustees, and approved by them, or any two of them, as aforesaid, and shall be entitled to have such section, division, or parcel of said lands released from the lien hereof upon the payment to the said trustees of the purchase money of the same, not less than such appraised value thereof; and the said trustees, or any two of them, are hereby authorized and empowered, upon the sale, as aforesaid, of any such section, division, or parcel of said lands, and the payment of the purchase money thereof, as aforesaid, to release and convey to such purchaser or purchasers, or to his or their heirs or assigns, the premises so sold, and thereby to discharge the same from the lien and operation of these presents and the trusts hereby created; provided always that no section, division, piece, or parcel of said lands shall at any time be sold or released, as aforesaid, below the appraised value thereof, without the consent in writing of all the trustees first had and received to such sale.

And it is hereby further declared and agreed that any of the lands aforesaid may be sold, as in this article above provided, wholly or partly on credit; provided that in any and every case of sale wholly or partly
253 on credit, and to whomsoever the sale may be made, the purchaser shall not receive a conveyance of the premises sold, or any part thereof, until payment in full of the purchase money, but may have delivered to him a contract in evidence of his purchase, unless for any special reason it shall be expedient, in the judgment of the said trustees, or any two of them, to accept from such purchaser a purchase-money bond and mortgage for the amount remaining unpaid; in which case the said trustees, or any two of them, may release the said premises to such purchaser upon receiving from him the cash portion of such purchase money and his personal bond for the unpaid purchase money, conditioned in

double the amount of the said unpaid purchase money for the payment of the same, in installments or otherwise, within a period of not exceeding five years from the date of such purchase, with interest thereon payable semi-annually.

And it is hereby expressly declared and agreed that any and all of the bonds aforesaid issued or to be issued by the said First Division of the Saint Paul and Pacific Railroad Company, as aforesaid, and the payment whereof is intended to be hereby secured, shall be payable and receivable, at the par value thereof, including the interest then accrued thereon, on account and in payment of the purchase money of any section, division, or parcel of said lands which shall be sold as aforesaid; and said bonds shall, in such payment, be deemed and accepted as equivalent, in all respects, dollar for dollar, of the principal and accrued interest thereof, to the same nominal amount in cash.

ARTICLE EIGHTH. It is hereby declared and agreed that for the purpose of granting and releasing from the lien of
254 these presents such of the lands and premises aforesaid as shall or may be sold in conformity with the last preceding article of these presents, the said trustees, respectively, may act, and they are hereby severally and respectively authorized and empowered to act, by agent or attorney; and all instruments executed and acts done by the agent or attorney of any of said trustees, duly appointed for that purpose, in respect to the conveyance or release of lands which shall be sold in conformity with said article, shall be as valid and effectual, to all intents and purposes, if the same be within the scope of authority of such agent, as if the same were executed by the trustee appointing such agent, in person; provided that every such power of attorney may be revoked by the trustee giving the same, at his pleasure, at any time before the execution of the authority therein granted, and that each of the said trustees may remove at pleasure any agent by him appointed; and provided further that nothing herein contained shall be construed to prevent the said trustees from uniting on any one or more persons as such agent or agents.

ARTICLE NINTH. The trustees, or any two of them, shall be authorized to allow reasonable compensation to any agents appointed by them as aforesaid, and to such clerks and assistants, if any, as they may deem necessary to employ, or as they may deem it necessary or proper for the said company to employ, in regard to the sale of said lands, as in article seventh provided, and the preparation of contracts and conveyances thereof; and they may from time to time allow to be deducted out of
255 the proceeds of lands so sold an amount sufficient to defray such expenses, if in their judgment such expenses be reasonable and proper, and in just proportion to the benefit derived by this trust from sales of the said land; provided always that the holders of the bonds hereby secured shall not, nor shall the said trustees, or either of them, become or be in any manner whatever personally liable or responsible for, or in respect to, any such liabilities or expenditures.

ARTICLE TENTH. The net proceeds of any and all sales of the lands aforesaid granted or to be granted, as aforesaid, for the purpose of aiding in the construction of said railroads, or any part thereof, which may be made by the said party of the first part, its successors or assigns, in conformity with the foregoing provisions of this instrument, are hereby inviolably pledged to the payment of the interest on said bonds and the redemption of the principal thereof, in the manner hereinafter mentioned; and the said trustees shall semi-annually apply the said net proceeds, first, to the payment at maturity, or as soon thereafter as

practicable, of any installment of interest on said bonds for which the said First Division of the St. Paul and Pacific Railroad Company shall have failed to make due provision; and, secondly, to the purchase of said bonds at the lowest price or prices, not exceeding a premium of ten per centum over the par value thereof, at which the said bonds may be offered for sale to the said trustees; but preparatory to such purchase of bonds in any semi-annual period in which the said trustees shall have funds in their hands applicable thereto, the said trustees shall, except in cases where in their judgment the amount of bonds which such funds would purchase shall make it inexpedient to incur the expense,
256 give public notice by advertisement in two newspapers of good circulation, in their judgment, published in the city of New York, and one newspaper published in the city of London, at least three times a week for two successive weeks, of their desire to receive proposals for the sale to them of the said bonds to such amount as the said funds in their hands may suffice to purchase; and after the expiration of two weeks from the last publication of such notice they shall apply the said funds to the purchase of said bonds, at the lowest price or prices at which they may be offered, without discrimination or preference between the bondholders offering the same for sale; provided, however, that if the said bonds shall, at the time being, be quoted on the stock exchange and have a known market value in New York or London, and such market value shall be lower than any price at which the said bonds may be offered pursuant to the notice aforesaid, the said trustees may purchase the said bonds at the stock exchange of either city, instead of from parties sending proposals to sell pursuant to such advertisement.

And it is hereby declared and agreed that all expenses attending such purchases of bonds, and the publication and notification thereof, may be defrayed by the said trustees from the said sinking fund.

The trustees shall, without unreasonable delay, cancel the bonds so redeemed by them and surrender the same to the said party of the first part, its successors or assigns; and they and the said party of the first part shall keep separate registries of all bonds so redeemed; and the registry of the company, showing the numbers and amounts of
257 the bonds so redeemed, shall be at all reasonable hours and times open to the inspection of the several holders of the bonds hereby secured, as well as of the said trustees, and the numbers and amounts of all bonds redeemed in each year shall be stated in the annu'l report to be made by the directors of the said company for such year to the stockholders thereof.

ARTICLE ELEVENTH. The First Division of the Saint Paul and Pacific Railroad Company shall hereafter keep at its transfer office or agency in the city of New York and also at its London agency an appropriate book for the transfer of said bonds, and shall also keep at the same places a certain other book to be designated as the register of first-mortgage bondholders; and every holder of bonds secured hereby shall be entitled to have his name and address and the denomination and number of any of the said bonds held by him entered in such register, upon presenting at the said office or agency a written statement of the said particulars, signed by himself, and, if required, duly verifying his title to said bonds by the production thereof, or upon the written order of the person last registered as the holder. The registration of the name and address of each bondholder and the denomination and numbers of the bonds by him held, upon such book, either in New York or London, shall be evidence of the right of the person so registered to

vote as a bondholder or do any other act which by these presents a bondholder is declared or may be entitled to do in respect to the bonds so registered. Each of the trustees shall have free access at all reasonable hours and times to such bond registry, and shall from
258 time to time, on request in writing, be furnished with a copy thereof by the said company. Meetings of the said first-mortgage bondholders may be called in the manner hereinafter provided, or in such mode as may be fixed by regulations prescribed or established by the bondholders; and the bondholders may vote at such meetings in person or by proxy; and the quorum may be defined and such other regulations or by-laws in respect to such meetings may be from time to time established, altered, or repealed by the bondholders, acting by the majority in interest, as to them shall seem expedient; and until the bondholders shall act, such powers may be exercised by the trustees.

The said trustees, and each of them, shall have the right to require that any act or resolution of the said bondholders affecting the duties of said trustees shall be authenticated by the signatures of all the persons assenting thereto, as well as by a minute of the proceedings of the meeting.

ARTICLE TWELFTH. The said party of the first part shall at all times keep at its principal office and at its agencies in the cities of New York and London, respectively, a record of all the sales of lands which shall be made as aforesaid, and of the prices paid for the same and the manner in which the purchase-money shall have been paid or secured, and of the amount, denomination, and numbers of the said bonds (if any) surrendered on account thereof; which record shall, at all reasonable hours and times, be open to the inspection, with the right of copy therefrom, of any and all holders of the bonds hereby secured; and the said trustees, or a majority of them, shall semi-annually, to wit, in
259 the months of January and July in each year, file in the said office a statement of the lands which shall have been by them released from the lien of these presents during the six months last preceding the time of filing such statement, and of the consideration received by them therefor, and of the disposition made of the same; which statement of said trustees shall also be at all reasonable hours and times open to the inspection of said bondholders, with the right to copy therefrom as aforesaid.

ARTICLE THIRTEENTH. In case default shall be made in the payment of any semi-annual installment of interest to accrue on any of the said bonds, and if such interest shall remain unpaid and in arrear for the period of six months, or in case default shall be made in the payment of the principal of any of the said bonds, then, in either and in every such case, it shall be the duty of the trustees under these presents, upon a requisition to them in writing, signed by the holders of not less than one-third of the whole amount of said bonds then outstanding, and upon adequate indemnity against all costs, expenses, and liabilities to be by said trustees incurred, to proceed to enforce the rights of the bondholders under these presents, either by the exercise of the powers granted by articles second and third of these presents, or by a suit or suits in equity or at law, in aid of the execution of such powers or otherwise, as the said trustees, being advised by counsel learned in the law, shall deem most effectual to enforce such rights; it being understood, and hereby expressly declared, that the rights of entry and sale hereinbefore granted are intended as cumulative remedies, additional to all other remedies allowed by law, and that the same shall not be deemed in
260 any manner whatsoever to deprive the said trustees, or the bene-

ficiaries under this trust, of any legal or equitable remedies by judicial proceedings, consistent with the provisions of these presents, according to the true intent and meaning thereof.

And it is hereby further declared and agreed that in case any trustee hereunder shall, in violation of the terms of this article, refuse to proceed, or unreasonably delay in proceeding, to enforce the rights of bondholders, upon requisition and indemnity as above provided, any or either of the other trustees may proceed to enforce such rights, in the manner hereinbefore specificed, and to exercise all the powers and authorities in that behalf hereinbefore granted, as validly and effectually as if the trustee so refusing or unreasonably delaying had joined in the enforcement and exercise of the same; provided always, and it is hereby expressly declared and agreed, that no holder of bonds secured to be paid hereby shall have the right to institute any suit or proceeding, in law or equity, for the foreclosure of this indenture or the execution of the trusts thereof, without first giving notice in writing to the said trustees of default having occurred, and requesting them and affording them a reasonable opportunity to institute such suit or proceeding, in their own name, or to proceed to exercise the powers hereinbefore granted, and offering to them adequate indemnity against the costs and expenses of such suit or proceeding; and such notification, request, and offer of indemnity is hereby declared to be a condition precedent to any cause of action for the foreclosure hereof, or the appointment of a receiver hereunder.

261 ARTICLE FOURTEENTH. It is mutually understood and agreed by and between the parties to these presents, and it is hereby declared that the word, "trustees," as used, and whenever the same may occur in this indenture is intended to refer to and describe, and the same shall in all cases be construed to mean the persons, or in the case of vacancies in the trust, the person who, for the time being, shall be charged with the execution of the trusts of these presents, whether such persons or person be the said parties of the second part, or any or either of them, or successors or a successor of said parties of the second part, or either of them hereunder; and in case of a vacancy or vacancies in said trust the surviving or continuing trustees or trustee shall be competent to exercise any and all powers and authorities hereunder, hereinbefore granted to the "trustees" or to the said parties of the second part. And it is further mutually agreed and declared that each of the said trustees shall be entitled to reasonable compensation for any and all services which may hereafter be rendered by him in said trust, which compensation the said party of the first part hereby promises and agrees to pay; but in case the said party should make default in such payment the same may be retained by the trustees out of any trust moneys coming into their hands, and such reasonable sum as shall be so retained, shall, unless the said trustees be then in possession of said premises become and be a lien upon the said premises and secured by the trusts of this indenture, to be paid by the said party of the first part, with interest for the benefit of the sinking fund hereinbefore created.

262 And it is further mutually agreed that the said trustees shall not, nor shall any of them, be in any manner whatever responsible for the default or misconduct of each other in said trust, or for the default or misconduct of any agent or attorney appointed pursuant to these presents, if such agent or attorney be selected with reasonable care, or for anything whatever in respect to said premises or the trusts hereby created, except personal misconduct or gross negligence in the execution of said trusts.

And it is further mutually agreed that the said trustees, or any or either of them, may resigne the trust hereby created, and be discharged from all further duty thereunder, upon giving three months' notice in writing to the said party of the first part, and calling a meeting of the bondholders, or upon such short notice as the said party of the first and a majority in interest of the said bondholders may accept as sufficient; and also that the said trustees, or any or either of them, may be removed from office by the vote of a majority in interest of the holders of the said bonds, the said vote being had at a meeting of the said bondholders duly held, and being attested by an instrument in writing under the hands and seals of the persons so voting; and that in case, at any time hereafter, either of the said trustees, or any trustee hereafter appointed, shall die, or resign, or be removed as herein provided or by a court of competent jurisdiction, or shall become incapable or unfit to act in the said trust, a successor to such trustee may be appointed by the holders, for the time being, of a majority in interest of the said bonds then outstanding, at a meeting of said bondholders, to be duly convened and held in conformity with the provisions of these presents.

And be it further mutually agreed and declared, that in case
263 any trustee hereunder shall die or resign, or be removed as herein provided or otherwise, or become non compos mentis, or otherwise legally incapable, or unfit to act in said trust, all powers and authorities shall, if there by any of his associate trustees continuing in office, vest in such associate trustees or trustee, subject to the provisions of these presents, until the appointment of a successor to such trustee; and that upon the appointment of a successor to such trustee, such successor shall, by force of these presents, and without any further assurance or conveyance, become vested with and entitled to exercise any and all powers and authorities such trustee so dying, resigning, being removed, or becoming non compos mentis or otherwise legally incapable, or unfit to act in said trust, was vested with or entitled to exercise at the time of his decease, resignation, or removal, or of his becoming non compos mentis, or legally incapable, or unfit to act as such trustee; but nevertheless, in case of resignation or removal, the trustee so resigning or being removed, and in case of the death of a trustee, the surviving trustee shall, if so required by a majority in interest of said bondholders, or by the new trustee who may be appointed, execute, acknowledge, and deliver to him a good and sufficient deed, or other instrument, to vest in him all the powers and authorities which were possessed by his predecessor in said trust as aforesaid, under or by virtue of these presents: Provided, nevertheless, that in case it shall prove, after reasonable exertions, to be impracticable to appoint a trustee in the manner aforesaid, and that the appointment of such new trustee shall be inconveniently or unreasonably delayed, and that such vacancy in said trust shall continue for the period of ninety days after the
264 existence of the same shall have been made known to any meeting of said bondholders, and to the said party of the first part, it shall be competent for any holder or holders of said bonds to the amount of not less than five hundred thousand dollars, to apply to any court of competent jurisdiction for the appointment of a new trustee to fill such vacancy, upon such reasonable notice to the parties interested, including the said party of the first part, as the said court may prescribe; and any trustee lawfully appointed upon such application, shall become vested with, and be subject to the same powers and authorities, as if appointed by the said bondholders in the manner aforesaid.

And it is hereby further expressly declared and agreed, that whenever

and as often as any contingency shall arise, in which the action of a majority in interest of the holders of said bonds shall be necessary, or in which the said bondholders are herein declared to have any discretionary voice or power, it shall be the duty of the said trustees, and they or a majority of them shall be, and they are hereby, authorized and required to call a meeting of all the holders of bonds secured hereby, to be held in the city of New York, by advertisement (the expense whereof shall be a liability of said party of the first part hereunder, and may be defrayed, if necessary, from the trust funds), to be published three times in each week for six weeks, in at least two newspapers of good circulation amongst the business community in said city, and one newspaper in the city of London, or the said meeting may be called in such other manner as may be prescribed for the convening of meetings of said bondholders, pursuant to the provisions of this instrument; and, in default of such meeting being called by the said trustees, or a majority of
265 them, within thirty days after notification in writing to them by any bondholder, of the necessity therefor, it shall be competent for any holder or holders of said bonds, to the aggregate amount of five hundred thousand dollars, to call said meeting in the manner aforesaid; and at such meeting, so convened, the holders of said bonds shall be competent to exercise in person, or by proxy, all the powers and authorities conferred upon them by these presents.

ARTICLE FIFTEENTH. The First Division of the Saint Paul and Pacific Railroad Company having contracted, as aforesaid, to construct and equip said railroads, and it being contemplated by the said party of the first part to lease said railroads to the said company, for a term of ninety-nine years, it is hereby expressly provided, agreed, and declared, that any and every such lease shall be in all respects subject to these presents, and to the due enforcement and execution thereof, and to all and singular the powers, rights, and trusts herein contained; and it is hereby further provided, agreed, and declared, that any and all rolling-stock, equipment, and materials, whatsoever, which, pursuant to such lease, or otherwise, shall or may be acquired or furnished for the use of the said railroads, or either of them, by the said First Division of the Saint Paul and Pacific Railroad Company, shall, by the mere acquisition thereof for such use, become and be part and parcel of the property hereinbefore granted, and become and be subject, in all respects, to the lien and operation thereof, in the same manner and with the same effect as if such property had been acquired by the said party of the first part hereto for such use.

266 ARTICLE SIXTEEN. If the said First Division of the Saint Paul and Pacific Railroad Company, or the said party of the first part, or the successors or assigns of either of said companies, shall well and truly pay the principal of each and every of said bonds, when the same shall become payable, and all interests thereon, as such interest shall from time to time mature, according to the tenor of such bonds respectively, and the terms of the several coupons thereto annexed, and shall well and truly do and observe every other matter and thing provided or mentioned in these presents, to be by them, respectively, done and observed, then, and in that case, all the estate, right, title, and interest of the said parties of the second part, and of the survivors and survivor of them, and of their and his successors and successor in the trust by these presents created, shall cease, determine, and become void, otherwise the same shall remain in full force and virtue.

And the said party of the first part, for itself, its successors and assigns,

in consideration of the premises, and of one dollar to it duly paid by the said parties of the second part, the receipt whereof is hereby acknowledged, hereby covenants and agrees to and with the said parties of the second part, and their successors in the trust created by these presents, that whenever and as often as the said party of the first part, its successors or assigns, shall hereafter acquire any lands from the Government of the United States, or from the State of Minnesota, by reason of the construction of the railroads hereinbefore granted, or of either, or any part of either thereof, or shall acquire any other property, rights,
267 franchises, or things whatsoever, pertaining to, or for use upon the railroads hereinbefore granted, or either or any part of either thereof, the said party of the first part, its successors and assigns, shall and will acquire, possess, and hold the same, and every part and parcel thereof, upon and subject to the trusts of this indenture, until conveyance thereof, in pursuance of the covenant next hereinafter contained, shall be duly made and delivered to the said parties of the second part, or their successors in the trust by these presents created.

And the said party of the first part, for itself, its successors and assigns, hereby covenants and agrees to and with the said parties of the second part, and their successors in the trust created by these presents, that the said party of the first part, its successors and assigns, or the said First Division of the Saint Paul and Pacific Railroad Company, its successors or assigns, shall and will diligently and faithfully use and apply the net proceeds of the negotiation of said bonds, or such of them as shall be negotiated, to the construction and equipment of said railroads, and shall and will, in each and every year ensuing the date hereof, also faithfully use and apply the net earnings and income to be, from time to time, derived from said railroads, or either of them, to the payment of the interest accruing in such year, on said bonds, when the same sl all become due, until all the said bonds shall be fully paid and satisfied; and that the said party of the first part, and the said First Division of the Saint Paul and Pacific Railroad Company, and their respective successors and assigns, shall and will, from time to time, and at all times hereafter, and as often as thereunto requested by the trustees
268 under this indenture, execute, deliver, and acknowledge all such further deeds, conveyances, and assurances in the law, for the better assuring unto such trustees, upon the trusts herein expressed, the railroads aforesaid, together with their equipments, appurtenances, and franchises, and all and singular the lands, property, and things hereinbefore mentioned or described, and granted or conveyed, or agreed to be granted or conveyed, to the said parties of the second part, or their successors in the trusts created by these presents, as by the said parties of the second part, or their successors in the trust hereby created, or by their counsel learned in the law, shall be reasonably advised, devised, or required.

In witness whereof the said party of the first part has caused its corporate seal to be hereunto affixed, and the same to be attested by the signatures of its president and secretary, and the said parties of the second part, for the purpose of evidencing their acceptance of this trust,

have hereunto set their hands and seals the day and year first above written.

269 EDMUND RICE,
President of the St. Paul & Pacific Railroad Company.
[CORPORATE SEAL.] WALTER HINCHMAN,
Secretary of the St. Paul & Pacific Railroad Company.
HORACE THOMPSON. [SEAL.]
GEORGE L. BECKER. [SEAL.]
WM. G. MOORHEAD. [SEAL.]

Signed, sealed, and delivered in the presence of—
CHARLES NETTLETON,
JAS. P. SINNOTT,
As to W. H., G. L. B., & W. G. M.
As to signatures of Mr. Rice and Mr. Thompson—
EDW'D D. ATWATER.
HERMANN TROTT.

Filed in office of secretary of state, State of Minnesota, Aug. 30th, 1871, at 10½ a. m.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this thirteenth day of July, A. D. one thousand eight hundred and seventy-one, before me, Charles Nettleton, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Minnesota to take the acknowledgement of deeds, etc., personally appeared Walter Hinchman, the secretary of the St. Paul & Pacific Railroad Company, who is personally known to me to be the same person who executed the foregoing instrument as such secretary, and who, being
270 by me duly sworn, did depose and say: That he resides in the said city of New York; that he is the secretary of the said company; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument purporting to be the corporate seal of said company is such corporate seal; that it was affixed thereto by order of the board of directors of said company, and that he signed his name thereto by the like order as secretary of said company. And the said Walter Hinchman did acknowledge to me that he had executed the same as his free and voluntary act and deed, and the free and voluntary act and deed of the said company, for the uses and purposes therein mentioned. And at the same time and place, before me, also appeared George L. Becker and William G. Moorhead, who are to me personally known to be the same persons described in and who executed the foregoing instrument as trustees, who severally acknowledged that they executed the same as their free and voluntary act and deed for the uses and purposes therein mentioned and as trustees therein mentioned.

In witness whereof I have hereunto set my hand and affixed my
271 official *my official* seal, this 13th day of July, A. D. 1871.
[SEAL.] CHARLES NETTLETON,
Commissioner for Minnesota in New York,
119 Broadway, New York City.

STATE OF MINNESOTA,
County of Ramsey, ss:

Be it remembered that on this twelfth day of August, A. D. one thousand eight hundred and seventy-one, before me, Hermann Trott, a notary

public, resident in the city of St. Paul, duly commissioned and qualified by the executive authority and under the laws of the State of Minnesota to take the acknowledgement of deeds, etc., personally appeared Edmund Rice, the president of the St. Paul & Pacific Railroad Company, who is personally known to me to the same person who executed the foregoing instrument as such president, and who, being by me duly sworn, did depose and say: That he is the president of the said company; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument purporting to be the corporate seal of said company is such corporate seal; that it was so affixed thereto by order of the
272 board of directors of said company, and that he signed his name thereto by the like order as president of said company. And the said Edmund Rice did acknowledge to me that he executed the same as his free and voluntary act and deed and the free and voluntary act and deed of the company, for the uses and purposes therein mentioned. And at the same time and place, before me, also personally appeared Horace Thompson, who is to me personally known to be the same person described in and who executed the foregoing instrument as trustee, who acknowledged that he executed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, this twelfth day of August, A. D. 1871.

[SEAL.] HERMANN TROTT,
Notary Public for Ramsey County.

273 [Fifteen cents revenue stamp consisting of three 5 cents cancelled.]

This indenture, made the first day of April, in the year of our Lord one thousand eight hundred and seventy-one, by and between the St. Paul and Pacific Railroad Company, a corporation of the State of Minnesota, of the first part, and the First Division of the Saint Paul and Pacific Railroad Company, a corporation of the same State, of the second part, witnesseth:

Whereas the said party of the second part has, by an agreement bearing even date herewith, contracted and agreed to assume and undertake the construction of the lines of railroad which the said party of the first is by law authorized to construct, maintain, and operate in the
274 said State of Minnesota, from some point at or near St. Cloud, in the county of Stearns, to St. Vincent, in the county of Pembina, being a distance of two hundred and ninety-three (293) miles, more or less; and from Watab, in the county of Benton, to Brainerd, in the county of Crow Wing, being a distance of fifty-five (55) miles, more or less; and to complete and put the same and every part thereof in good running order and condition within the time and in the manner required by the acts of Congress granting lands to the Territory and State of Minnesota to aid in the construction of said railroads, to wit, an act of the said Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of certain railroads in said State," approved March 3d, 1857, and a certain other act thereof entitled "An act extending the time for the completion of certain land grant railroads in the States of Minnesota and Iowa, and for other purposes," approved March 3d, 1865; and a certain other act thereof entitled "An act authorizing the Saint Paul and Pacific Railroad Company to change its lines in consideration of a relinquishment of lands," approved March 3d, 1871, and the acts of the legislature of

said State of Minnesota executing the trust created by the said acts of Congress or in relation to the disposition of the lands therein mentioned, to wit, an act of the said legislature entitled "An act to facilitate the construction of the Minnesota and Pacific Railroad, and to amend and continue the act of incorporation relating thereto," approved March 10th, 1862, and acts amendatory thereof or relating to the rail-
275 road therein described, approved, respectively, February 6th, 1864, March 4th, 1864, and March 2d, 1865, or such other acts as shall or may hereafter be passed by the said Congress and the said legislature respectively, so that the said party of the first part shall and may become vested under the said acts with the legal title to all and singular the lands thereby granted to aid in the construction of the said lines of railroad or either of them.

And whereas the said party of the second part in and by such contract agreed to execute, issue, and offer for sale and negotiation a series of bonds amounting in the aggregate to fifteen millions of dollars, and consisting of fifteen thousand bonds of one thousand dollars each, bearing date on the first day of April, in the year one thousand eight hundred and seventy-one, and payable on the first day of January, in the year one thousand nine hundred and one, in lawful money of the United States, in the city of New York, or in British pounds sterling in the city of London, at the rate of four British shillings per dollar, at the option of the holder, and bearing interest at the rate of seven per centum per annum, payable semi-annually, in the lawful money of the United States, if demanded in New York, or in British pounds sterling, if demanded in London, aforesaid, at the option of the holder of the coupons representing the same; and the said party of the first part agreed, for the benefit of the parties who may become holders of the said bonds, to assume and secure the payment thereof by the execution and delivery to trustees of a deed of trust or mortgage of and upon all and singular the said lines of railroad so to be constructed, with their equipments,
276 appurtenances, and franchises, and also of and upon all right, title, and interest now held and hereafter to be acquired by the said party of the first part in and to the lands granted by Congress as aforesaid to aid in the construction of said lines of railroad, and subject to said deed of trust or mortgage, but not otherwise, to execute and deliver to the said party of the second part a lease of the said lines of railroad for the term of ninety-nine years, the said party of the second part agreeing to operate, maintain, and from time to time supply with all necessary and proper equipment the said railroads, and to apply semi-annually any and all net earnings and income thereof to the payment in the first place of the interest on said bonds as the same shall fall due; and if in any year, after paying in full out of the said net earnings, all interest on said bonds which shall have become due, a balance or surplus of the said net earnings shall remain, to pay over the same to the trustees, for the time being, under the deed of trust or mortgage aforesaid, securing the payment of said bonds, to be by the said trustees used and applied in the payment of the interest on said bonds, and the redemption of the principal thereof, in the manner provided in said deed of trust or mortgage in reference to the net proceeds of the sales of the lands granted by Congress to aid in the construction of said railroads therein mentioned; provided, however, that when all the bonds aforesaid shall have been fully paid and satisfied, principal as well as interest, or due provision made in money for the payment thereof, then and from thenceforth all net earnings of the said railroads, or of either of them, remaining in any year after paying the expenses of operating and maintaining the

said railroads during such year, and carrying on the business
277 thereof, shall, within a reasonable time after the close of such year, be paid over to the said party of the first part to an amount equal, so far as such net earnings may suffice, to a dividend of six per centum upon the whole aggregate amount of the capital stock of the said party of the first part now issued and outstanding.

And whereas the said party of the second part has duly executed the series of bonds aforesaid to the amount of fifteen millions of dollars, and is about to endeavor to negotiate the same for the purpose of procuring the means necessary to construct and equip said lines of railroad in pursuance of the said construction contract and in conformity therewith; and the said party of the first part in like conformity to said contract, has duly executed and delivered the deed of trust or mortgage, securing the payment of said bonds, in the said construction contract mentioned:

Now, therefore, this indenture witnesseth that the said party of the first part for and in consideration of the premises and of the sum of one dollar to it duly paid by the said party of the second part, at or before the unsealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, demised, and leased, and by these presents doth grant, demise, and lease unto the said party of the second part, its successors and assigns, all and singular the railroads aforesaid, which the said party of the first part is authorized to construct from a point at or near Saint Cloud aforesaid to Saint Vincent, in the said State of Minnesota, and from Watab aforesaid to Brainerd, in the same State, together with the appurtenances of the said railroads, respec-
278 tively, and the rights, privileges, and franchises thereunto belonging or in anywise appertaining or which shall or may at any time hereafter thereunto belong or in anywise appertain.

To have and to hold the said railroads unto the said party of the second part, its successors and assigns, for and during the term of ninety-nine years from the date hereof, it and they keeping and performing the covenants and making, from time to time, the payments mentioned in these presents to be by it or them kept, performed, or made.

And the said party of the second part for itself, its successors and assigns, covenants, promises and agrees to and with the said party of the first part that the said party of the second part, its successors or assigns, shall and will construct the said lines of railroad to be constructed as aforesaid from Saint Cloud to Saint Vincent, and from Watab to Brainerd, in the time and in the manner hereinbefore mentioned, and shall and will from time to time, and as the same may be needed, procure and supply for use upon the said railroads, respectively, any and all rolling-stock, equipment, and materials whatsoever, which shall or may be necessary and proper for the purpose of transacting the business of the said railroads or either of them; and it is understood and agreed and hereby declared that any and all rolling-stock, equipments, and materials whatsoever, which pursuant to this lease or otherwise, shall or may be acquired or furnished for the use of the said railroads, or either of them, by the said party of the second part, its successors or assigns, shall by the mere acquisition thereof for such use, become and be part and parcel of the property granted by the deed of trust or mort-
gage aforesaid, bearing even date herewith, made by the said
279 party of the first part to secure said issue of bonds of the said party of the second part, to the amount of fifteen millions of dollars, and become and be in all respects subject to the lien and operation thereof, in the same manner and with the same effect as if such property had been acquired by the said party of the first

part hereto, for such use, as is also provided and declared in the fifteenth article of the said deed of trust or mortgage; and that the said party of the second part, its successors or assigns, shall and will operate and maintain the said lines of railroad, for the said term of ninety-nine years, in the manner hereinbefore mentioned; subject always, however, to the deed of trust or mortgage aforesaid, and all and singular the provisions thereof, and the powers, rights, and authorities therein granted; and that it or they shall and will, in each and every year, and at all times during said term, until the bonds aforesaid shall be fully paid and satisfied, use and apply the net earnings made or derived from the said lines of railroad, or either of them, or the business of the same, in and to the payment, in the first place, of the interest on the bonds aforesaid, as such interest shall semi-annually become due and payable; and if in any year after the payment of such interest, a surplus or balance of such net earnings shall remain, pay over such surplus or balance to the trustees for the time being, under the deed of trust or mortgage aforesaid, securing the payment of said bonds, to be by the said trustees used and applied in the payment of interest on said bonds, and the redemption of the principal thereof, in the manner provided in said deed of trust or mortgage in reference to the net proceeds of the sales of the lands granted by Congress to aid in the construction
280 of said railroads therein mentioned: Provided, however, that when all the bonds aforesaid shall have been fully paid and satisfied, principal as well as interest, or due provision made in money for the payment thereof, then and from thenceforth, all net earnings of the said railroads, or either of them, remaining in any year after paying the expenses of operating and maintaining the said railroads during such year and carrying on the business thereof, shall, within a reasonable time after the close of such year, be paid over to the said party of the first part, to an amount equal to a dividend of six per cent. on the existing capital stock of the said party of the first part, as aforesaid, so far as such balance may suffice; and that the said party of the second part, its successors and assigns, shall and will do and perform any and every act and thing mentioned or required in the deed of trust or mortgage aforesaid to be by it or them done or performed, and at the end of the said term or other sooner determination of this lease, surrender up the said premises to the said party of the first part, its successors or assigns.

And the said party of the second part, further covenants, promises and agrees, to and with the said party of the first part, that the said party of the second part, its successors or assigns, shall and will, within a reasonable time after the expiration of each and every calendar year, during the term aforesaid, ensuing the date hereof, furnish to the said party of the first part, its successors or assigns, full, true, and detailed statements of the earnings of said railroads, and the expenses of operating and maintaining the same during such year; and that any and all books of account and vouchers containing or purporting to contain the accounts or entries of such earnings, or the expenses of
281 the said railroads, or either of them, shall at all reasonable hours and times be open to the inspection of the said party of the first part, its successors or assigns, with the right to make transcripts therefrom.

In witness whereof, the said parties of the first and second parts have caused their respective corporate seals to be hereunto affixed, and the

same to be attested by the signatures of their respective presidents and secretaries, the day and year first above written.

282 EDMUND RICE,
President of the St. Paul & Pacific Railroad Company.

[ST. & P. R. R., SEAL.] WALTER HINCHMAN,
Secretary St. Paul & Pacific R. R. Co.

GEORGE L. BECKER,
President of the First Division of the St. Paul & Pacific Railroad Company.

{SEAL 1 DIV. ST. P. & P. R. R. CO.} SAM S. BREED, *Secretary.*

Signed, sealed, & delivered in presence of—
CHARLES NETTLETON,
EDW'D. D. ATWATER,
HERMANN TROTT.

Filed Aug. 31, A. D. 1871, at 2¼ o'clock p. m., in office of sec'y of state, State of Minnesota.

STATE OF NEW YORK,
City & County of New York, ss :

Be it remembered that on this 14th day of July, A. D. 1871, before me the undersigned, Charles Nettleton, a commissioner, resident in the city of New York, duly commissioned and qualified by the executive authority, and under the laws of the State of Minnesota, to take the acknowl'dgement of clerks, etc., personally appeared Walter Hinchman, the secretary of the St. Paul and Pacific Railroad Company, to me personally known to be such, who being by me duly sworn, did depose and say that he resided in the city, county, and State of New York ; that he was the secretary of the said the St. Paul and Pacific Railroad
283 Company; that he knows the corporate seal of the said company; that the seal affixed to the foregoing instrument was such corporate seal ; that it was so affixed by order of the board of directors of said company, and that he, the said Walter Hinchman, signed his name thereto, by the like order, as secretary of said company ; and that said Walter Hinchman also acknowledged to me that he had executed the said instrument of writing freely and voluntarily, and as the free act and deed of the said the St. Paul & Pacific Railroad Company, and for the uses and purposes therein mentioned. And at the same time and place also personally appeared before me, George L. Becker, the president of the First Division St. Paul & Pacific Railroad Company, and Samuel S. Breed, the secretary of the same company, to me, respectively, personally known to be such, who being by me severally duly sworn, did depose and say that he, the said George L. Becker resided in the city of St. Paul, and State of Minnesota; that he, the said Samuel S. Breed, resided in the same city of St. Paul; that he, the said George L. Becker, was the president, and he, the said Samuel S. Breed, was the secretary of the said the First Division St. Paul & Pacific Railroad Com-
284 pany; that they know the corporate seal of said company ; that the seal affixed to the foregoing instrument was such corporate seal ; that it was so affixed by order of the board of directors of said company, and that they, said George L. Becker and Samuel S. Breed, signed their names thereto, by the like order, as president and secretary of said company, respectively ; and the said George L. Becker and Samuel S. Breed, also, personally acknowledged to me that they have executed the said instrument of writing freely and voluntarily, and as the

free act and deed of the said the First Division St. Paul & Pacific Railroad Company, and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal this 14th day of July, A. D. 1871.

[SEAL.] CHARLES NETTLETON,
Commissioner for Minnesota, in New York,
117 *Broadway, N Y. City.*

STATE OF MINNESOTA,
County of Ramsey, ss:

Be it remembered that on this twelfth day of August, A. D. one thousand eight hundred and seventy-one, before me, Hermann Trott, a notary public, resident in the city of St. Paul, duly commissioned and
285 qualified by the executive authority, and under the laws of the State of Minnesota, to take the acknowledgment of deeds, etc., personally appeared Edmund Rice, the president of the St. Paul & Pacific Railroad Company, who is personally known to me to be the same person who executed the foregoing instrument as such president, and who being by me duly sworn did depose and say that he resides in the city of St. Paul; that he is the president of the St. Paul & Pacific Railroad Company; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument purporting to be the corporate seal of said company, is such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that he signed his name thereto, by the like order, as president of said company; and the said Edmund Rice did acknowledge to me that he had executed the same as his free and voluntary act and deed, and the free and voluntary act and deed of the company for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal this twelfth day of August, A. D. 1871.

[SEAL.] HERMANN TROTT,
Notary Public for Ramsey County.

286 (Indorsed:) In the circuit court of the United States, district of Minnesota. In equity. Jesse P. Farley, receiver, vs. C. A. De Graff et als. Stipulation and documentary evidence. Filed Sept. 6, 1877. H. E. Mann, clerk.

287 In the circuit court of the United States for the district of Minnesota.

JESSE P. FARLEY, RECEIVER, PLAINTIFF,
vs.
CHARLES A. DE GRAFF ET AL., DEFENDANTS.

It is hereby stipulated between the plaintiff and the defendants, Charles A. De Graff and William Crooks, as follows:

1. The following testimony of George L. Becker, Charles A. F. Morris, H. H. Williams, Andrew De Graff, William Crooks, B. S. Russell, William G. Moorhead, Richard W. Dorphley, Samuel L. Felton, Frederick Billings, and George W. Cass, with the written documents therein referred to, of which copies are hereunto annexed as exhibits, taken in the case of Edwin M. Lewis, trustee, vs. C. A. De Graff et al., may be read in evidence by either party in the final hearing of this cause, with the same force and effect, and subject to the same objections, on the

ground of the immateriality thereof, or of any portion or portions thereof, as if the same had been taken in this case.

2. At the time of the purchase by De Graff and Company of the 2,700 tons of iron mentioned in their answer in this cause they received
288 from William G. Moorhead, by the hand of B. S. Russell, his agent, a written document, whereof a copy is hereunto annexed marked "Exhibit No. 20." At the same time De Graff & Co. delivered to Moorhead, by the hand of Russell, a written document, whereof a copy is hereunto annexed marked "Exhibit No. 21."

3. All the said iron in suit was imported into the United States from the kingdom of Great Britain in the year 1872, whereby it became liable for the payment of duties under and in accordance with the laws of the United States; and the one thousand tons thereof purchased by De Graff & Co., which were lying in Duluth, were, at the time of such purchase, in the custody of the collector of customs of the port of Duluth, the same never having been entered for consumption, and no part of the duties, penalties, or charges, to which the United States were entitled in respect of the same, ever having been paid. The duties, penalties, and charges due to the United States in respect of said one thousand tons of iron were afterwards paid by De Graff & Co to the same, and at the dates following, that is to say:

May 14, 1875	$5,793	16
June 21, 1875	3,387	88
289 August 21, 1875	6,341	63
Total	$15,523	20

The average value of the above payments, at the times when and places where the same were made, were as follows:

Payment of May 14, 1875	$6,742	40
" " June 21, 1875	3,980	74
" " August 21, 1875	7,198	53
Total currency	$17,921	67

Said payments were made in gold coin of the United States, and were necessary to prevent the forfeiture of said iron to the United States for the nonpayment of such duties, penalties, and charges, under the laws thereof.

4. For the purposes of this cause the following statements may be taken to be true:

The sale of bonds of the $15,000,000 issue, mentioned in the pleadings and evidence, ceased in the month of June or fore part of July, 1872, and after that time Lippman, Rosenthall & Co., in whose hands all said issue of bonds had from time to time been placed, failed to sell any more of said bonds, and retained in their possession all of such bonds remaining unsold.

When such failure to negotiate bonds occurred all the proceeds of said bonds had been expended, except such portions thereof as
290 were paid to De Graff & Co., between that time and October, 1872; and neither the First Division Company nor the St. Paul & Pacific Railroad Company, at the time of such failure, or afterwards, had any means to further prosecute the enterprise of constructing the lines of railroad mentioned in the pleadings and evidence. At the time of the failure aforesaid in the sale of said bonds, and at the time

of the failure of said First Division Company to make payments for work done and materials furnished in the construction of said lines of railroad, in accordance with the terms of its obligations in that regard, four and one-half miles, and no more, of the said extension lines of railroad had been completed.

5. Copies of the contracts for the construction of the said lines of railroad, entered into between De Graff & Co. and the said Moorhead, are hereunto annexed marked respectively Exhibit No. 22, Exhibit No. 23, and Exhibit No. 24.

6. No payments were ever made to the said William G. Moorhead on account of the work done or materials furnished by DeGraff & Co. in the construction of said lines of road, except of such sums as were afterwards paid over to DeGraff & Co. by him, as stated in the evidence.

291 7. Either party may read in evidence on the hearing any statute of the State of Minnesota or any act of Congress relating to the lines of railroad referred to in the pleadings and evidence.

8. The plaintiff was duly appointed receiver of the St. Paul & Pacific Railroad as alleged in his bill, and the suit wherein he was so appointed is still pending, and the parties defendant in such suit have appeared therein.

9. About 230 miles of the lines of road referred to in the complaint remain uncompleted, and about 143½ miles in all thereof have heretofore been completed.

To fully complete said lines, about 34,000 tons of iron rails were required, which was about the quantity purchased.

There were used on said lines, of the rails purchased, about 12,624 tons in all. The residue of the rails purchased, except those portions thereof which are in controversy in this suit, have been sold and disposed of by said Moorhead.

The price paid for such iron was about $50 per ton, exclusive of duties, &c.

10. All the iron so purchased was paid for out of funds in the hands of Lippman, Rosenthall & Co., arising from the sale of said bonds through orders signed by William G. Moorhead, trustee, and George L.

292 Baker, president and trustee, and running to the said Lippman, Rosenthall & Co.

11. The said Lippman, Rosenthall & Co. actually sold and negotiated 9,000 of said bonds, of the sales of which they have rendered account to the said First Division Company; and they claim to have actually sold and negotiated 1,300 of such bonds in addition thereto, and to have made advances of money on the security of the remaining 4,700 thereof.

The total proceeds of the sale of said bonds by Lippman, Rosenthall & Co., and of all loans of money upon the security thereof, was the sum of about £1,592,898 in gold coin. This sum was disposed of by Lippman, Rosenthall & Co. substantially as follows:

Retained to pay interest on same bonds	£412,000
Commissions and expenses of sale of bonds	£105,543
Remitted to America	£328,800
Paid for iron rails in Europe	£297,141
Paid interest on First Division Company's bonds in Holland	£174,022
Paid E. D. Litchfield, of England, for completing main line of First Division Company	£274,185

None of said bonds have been paid.

12. Said Moorhead was solvent and in affluent circumstances

293 from a time prior to April, 1871, until September, 1873, when he became insolvent, and has ever since so remained.

The firm of Jay Cooke & Co., of which said Moorhead was a member, failed in September, A. D. 1873.

13. On the 29th day of September, A. D. 1873, the said De Graff and Co. commenced an action at law in the district court for the county of Ramsey, and State of Minnesota, against the First Division of the St. Paul & Pacific Railroad Company; and in the complaint in said action charged that said company was liable to said DeGraff & Co. upon the contracts, Exhibits No. 22, 23, and 24, hereto annexed, and demanded judgment against said company on said contracts for the sum of $532,420 with interest.

14. That Exhibit 44 hereto attached is a true copy of an affidavit made by William Crooks, of the firm of the defendant DeGraff & Co., on the 9th day of July, 1873, in the suit wherein the plaintiff was appointed receiver, as stated in his complaint herein, and may be read in evidence by either party on the final hearing of this cause, subject to the aforesaid objection on the ground of the immateriality thereof, or any portions thereof.

294 15. Either party, if he so desire, may read on the hearing herein in evidence, or file as part of the testimony the complaint in the suit of Kennedy & Co. vs. The St. Paul and Pacific Railroad Company referred to in the complaint in this action.

16. That Exhibit 45 hereto attached is a copy of the complaint in a suit prosecuted in the district court of the State of Minnesota by De Graff & Co. vs. J. P. Farley, receiver, et al., and may be read in evidence, subject to the objections aforesaid.

In said complaint no credit is given by DeGraff & Co. for the iron claimed by them in this suit.

17. Either party may read in evidence in the hearing herein, subject to the objection aforesaid, the pleadings and the judgments in the suits of Lewis vs. DeGraff & Co. and DeGraff & Co. vs. Moorhead, in the circuit court of the United States for the district of Minnesota, and the complaint in the case of DeGraff & Co. vs. The First Division Company in the district court of Ramsey County, Minn., or either.

18. For the purposes of this action, subject to the objection aforesaid it is admitted that on the 2d day of April, 1875, the requisite
295 number of bondholders, as prescribed by the mortgage referred to in the complaint, to wit, by article 11 of said mortgage by their duly authorized attorneys in fact, met in the city of New York, and at such meeting duly fixed, prescribed, and established the necessary and proper regulations and by-laws in respect to the meetings of the holders of the bonds secured by the same mortgage, and also defined what should constitute a quorum. That afterwards, at a meeting of such holders duly holden in said city of New York, on the 16th day of April, 1875, the trustees under said mortgage, and therein named, viz, William G. Moorhead, Horace Thompson, and George L. Becker were duly removed from office and from their trusteeship under the said mortgage by a vote of a majority in interest of the holders of said bonds, and under and by virtue of the authority so conferred on them under the said mortgage, to wit, under the 12th article thereof, the said vote being had at a meeting of the bondholders duly holden, and pursuant to the regulations prescribed and established as aforesaid, and which said vote was duly attested by an instrument in writing under the hands and seals of the persons so voting. That afterwards, at a meeting of such bond holders aforesaid, duly holden

296 in the city of New York, pursuant to the regulations prescribed and established as aforesaid, and duly held and convened in conformity with the provisions of said mortgage, on the 20th day of April, 1875, the defendants Jacob S. Wetmore, Thomas W. Pearsall, and Thomas Denny were duly appointed by the holders for the time being of a majority in interest of the said bonds, successors to said Thompson, Becker, and Moorhead, trustees as aforesaid, and the said defendants Wetmore, Pearsall, and Denny, did thereupon duly accept of said trust, and become vested with and entitled to exercise all the powers and authority conferred upon the trustees named in the said mortgage under and by virtue of the provisions thereof, and they ever since have been, and now are, the duly chosen and acting and qualified trustees under the said mortgage.

That afterwards, and prior to the commencement of this action, due notice of such meetings of bondholders, of said removal of trustees, and of such appointment of successors was given to the said Thompson, Becker, and Moorhead.

19. It is further admitted, subject to the objection aforesaid, that default has been made in the payment of the interest on the bonds described in the complaint, and secured by said mortgage; and that
297 the holders of said bonds have no security whatever, other than the said mortgage, and that the same is scanty and insufficient; and the whole property covered by the said mortgage is not of sufficient value to pay the bonds so negotiated and outstanding under the said mortgage.

That the First Division Company is insolvent, and has not property sufficient to pay the amount for which the property of said First Division Company is incumbered by mortgage.

20. The trustees, Pearsall, Wetmore, and Denny, mentioned in article 18 of this stipulation, are now prosecuting a suit in this court to foreclose the $15,000,000 mortgage referred to herein.

21. That the payment of duties referred to in article 3 of this stipulation was made pursuant to a bond, a copy whereof is hereunto annexed, marked Exhibit 46, and pursuant to the arrangement recited in said bond.

22. That Exhibit 39½, being bill of sale of iron, dated October 18, 1872, was never delivered. The bill of sale actually delivered is Exhibit No. 20.

June 4, 1877.

I. V. D. HEARD,
Sol'r for Pl'ff.
GILMAN, CLOUGH & LANE,
Sol'rs for Def'ts De Graff & Co.

298 We hereby consent that the foregoing stipulation shall apply to the defendants in the foregoing entitled cause, other than the said De Graff & Co. and to the plaintiff.

Dated June, 1877.

I. V. D. HEARD,
Sol'r for Pl'ff.
GEO. L. OTIS,
Sol'r for Trustees.
GILMAN, CLOUGH & LANE,
Sol'rs for Def'ts De Graff & Co., & Lewis,
SMITH & EGAN,
Sol'rs for Lewis & B. S. Russell.

299 *Testimony on behalf of the defendants C. A. DeGraff and William Crooks.*

In the circuit court of the United States for the district of Minnesota.

JESSE P. FARLEY, RECEIVER,
vs.
CHARLES A. DEGRAFF ET AL.

Testimony of Geo. L. Becker.

MONDAY, *May 24th.*

Parties met pursuant to notice, and examination was continued until Wednesday morning, May 26th, 1875, at 10 o'clock, a. m.

WEDNESDAY, *May 26th*, 1875.

The plaintiff, by his solicitor, appeared, and GEO. L. BECKER, a witness produced on the part of the defendants, DeGraft & Co., being first duly sworn, deposes and says:

I reside in St. Paul, Minnesota; have resided there nearly twenty-six years. My present occupation is president of the First Division of the Saint Paul and Pacific R. R. Co. (Witness shown bill of complaint, and asked if the company mentioned in the bill as the First Division of the St. Paul and Pacific Railroad Co. is the same company that he is president of.) It is. I have been president since February, 1864, of that company; ever since its organization. That company owns
300 the road from St. Paul to Watab, eighty miles; and from St. Anthony Junction to Breckenridge, two hundred and six miles. The line last spoken of is generally called the main line, and the other the branch line. The main line was commenced, I think, as early as 1866, and was finished, I think, in 1870. The branch line was partly built when this company was organized, as far as Anoka, and was finished to Sauk Rapids in 1867, I think. The company obtained its means to build both its main and branch lines by a sale of bonds secured by mortgage on its road-bed and Congressional land grant. These bonds, so far as I know, were negotiated in Holland. All the bonds of the First Division were negotiated in Holland; they were negotiated by Lippmann, Rosenthal & Co., at Amsterdam. They are bankers, and negotiators of bonds generally. (Witness's attention called to the answer of defendants, DeGraff & Co.) The Lippmann, Rosenthal & Co. of whom I have spoken are the same firm which are spoken of in the answer of DeGraff & Co. as Lippmann, Rosenthal & Co. I know of no other firm by that name. They commenced to negotiate the bonds of the First Division Co. in 1865, I think.

I knew Leon Willmar in his lifetime. I understand he died last June. He acted as the authorized agent of Lippmann, Rosenthal & Co., in regard to negotiating these bonds. I know E. D. Litchfield, of London, England. I first saw him, I think, in November, 1868; had corresponded with him, but first met him then in London. Mr. E. D. Litchfield was the principal stockholder of the First Division Company, and was also a contractor for the construction of its main line. He became the principal stockholder in January, 1869, I think. He owned all the stock of the company, with the exception of a few shares. He remained the principal stockholder until December, 1870. When he became
301 the principal stockholder about 170 miles of the main line of the

road was unfinished—170 or 180 miles. The company, immediately before and about the time he became the principal stockholder, were making efforts to complete this line. They had made an issue of bonds of $1,500,000 on the first 150 miles of road. They had also made an issue of bonds of $3,000,000, which were second on same length of road, and first on the first land-grant of six sections per mile on the same length of road. Not more than ten or twelve thousand dollars of the first issue were ever negotiated, I believe. Mr. Litchfield authorized me to go on and attempt the construction of the first 150 miles with the proceeds of the $3,000,000 loan, I sending him the bonds and he making remittances as I called for them. The contracts for the construction here were made, I think, in the name of the company, the company looking to Mr. Litchfield to raise the money to meet the liabilities as they occurred. We went on in that way until I went to London, in the fall of 1868. Then I made a contract with Mr. Litchfield for the completion of the whole line from Saint Anthony to Breckenridge, he receiving the entire proceeds of the $3,000,000 loan and of a new issue of bonds, amounting to $6,000,000.

The company at this made an arrangement for a new issue of bonds of $6,000,000 to complete the line to Breckenridge. This arrangement was made with Mr. Litchfield. An arrangement was made at that time with Messrs. Lippmann, Rosenthal & Co. for the negotiation of these bonds; they undertook to place them for Mr. Litchfield. I went to Amsterdam with Mr. Willmar in December, 1868, and had an interview together with Lippmann, Rosenthal & Co., and stated to them with some minuteness the plan which had been agreed upon for the construction of the road. They proposed some modifications, which are distinctly stated in their letter to Mr. Willmar of December 5, 1868; those
302 modifications were afterwards stated to me by Mr. Willmar. The letter was delivered to him before he left Amsterdam at that time. Mr. Willmar stated those modifications to me. They required in the first instance to know that the $6,000,000 would complete the line; that the net proceeds of the finished lines so far as completed should be sent to Messrs. Lippmann, Rosenthal & Co. monthly towards meeting the interest on the bonds; that Mr. Litchfield should undertake to cancel the then floating indebtedness of the company; and that he should place with me, as president of the company, in trust, the majority in amount of all the shares of either line, which were to be controlled as Litchfield, the president of the company, for the time being, and some one representing the firm of Lippmann, Rosenthal & Co. might agree, or in case of division of sentiment, as any two of them might agree.

It was also required by Lippmann, Rosenthal & Co. that a contract should be entered into with some responsible party for the construction of the road. They wanted to be satisfied that the proceeds of the bonds which were issued would complete the line was the reason they wanted a contract to be entered into by some responsible party; they wanted to be able to assure the public, who they expected would take the bonds, that the proceeds would finish the lines; these modifications, including the letting the contract for the building the road by some responsible party, were insisted upon by Messrs. Lippmann, Rosenthal & Co. as conditions precedent to the undertaking the negotiation of the bonds. Lippmann, Rosenthal & Co. intimated that they desired Mr. Litchfield to be the party who should contract to construct the road; it was so understood before the letter was written, and is mentioned in it; I don't mean to say that they first suggested Mr. Litchfield as the contractor, but they assented to it. Mr. Willmar furnished me with a copy of the

letter of December 5, 1868, from Messrs. Lippman, Rosenthal &
303 Co., stating the condition on which they would undertake the negotiation of these bonds, and I have it now in my possession and can produce it if desired; this copy was delivered to me as a memorandum from Lippmann, Rosenthal & Co., embodying the conditions upon which they would undertake the negotiation of the bonds. (Witness is requested to produce the copy of letter referred to.) Letter produced and a copy made by the examiner and hereto attached and marked Exhibit "A." (A copy of said document is hereto annexed marked Exhibit No. 1.) The terms and conditions mentioned in this letter were assented to by Mr. Litchfield, and acted upon by the company. The bonds were issued in pursuance of these conditions and negotiated by Messrs. Lippmann, Rosenthal & Co.

In pursuance of the arrangement mentioned, a contract was entered into by the First Division Company with Mr. Litchfield for the construction of the road. I have that agreement in my possession, I think. (Witness is requested to produce the contract, if he has it in his possession.) The construction of the road was commenced and pursued under this contract until the fall of 1870. Mr. Litchfield sublet portions of the contract to other parties. He made a contract with DeGraff & Co. for the grading, the ties, and the laying of the iron. DeGraff & Co. was then, I think, Charles A. DeGraff and William Crooks. I acted for Mr. Litchfield in seeing to the carrying out of this contract with the company. He constituted me his agent for that purpose. DeGraff & Co. performed their contract. DeGraff & Co. were familiar with the arrangement between the company and Litchfield for the building of the road. I had talked the matter over with them, and informed them. They were acquainted with the terms of the arrangement at the time they entered into the contract. In pursuance of the contract, the company turned over to
Mr. Litchfield the $3,000,000 and the $6,000,000 issue of bonds.
304 I do not know what Mr. Litchfield realized from the bonds. Mr. Litchfield acted as contractor and not as agent of the company, in respect to this construction of the road.

The First Division Company leased the line of the Saint Paul and Pacific Railroad from Watab to Brainerd, and from St. Cloud to St. Vincent. This lease was made in the early part of the year 1871; the papers were executed then. The arrangement was made in the year previous, in 1870. Mr. Litchfield disposed of all his stock in the First Division Company to the Northern Pacific Railroad Company in 1870. The Northern Pacific Railroad Company at the same time acquired nearly all the stock of the St. Paul and Pacific Railroad Company. An arrangement was made in 1870 for the construction of these lines of the St. Paul and Pacific Railroad Company, which I have spoken of. These lines are commonly known as the extension lines. Previous to the arrangement for the construction of these lines, the Northern Pacific Railroad Company had purchased the stock of the St. Paul and Pacific Railroad Company. In November, 1870, Mr. Litchfield and Mr. Willmar came to New York; before they came, they informed me they were coming, and notified me to meet them there. They came from London to New York, and I met them at the Fifth Avenue Hotel, on the day of their arrival at New York. I arrived there the same day, and Mr. Moorhead also arrived at that hotel on the same day, and we all met at the dinner table. I mean Wm. G. Moorhead, who is mentioned in the pleadings. He was a director of the Northern Pacific Railroad Company, and was representing that company there. Mr. Litchfield or Mr. Willmar told me he had telegraphed Mr. Moorhead to meet them there.

May 27, 1875. Witness' attention again calle to Exhibit A. At the time I received Exhibit A (a copy of said paper is hereunto an-
305 nexed marked Exhibit No. 1), I also received a letter from Mr. Willmar, dated December 5, 1868. Letter produced, a copy of which is hereto attached, marked Exhibit "B." (A copy of said document is hereunto annexed and marked Exhibit No. 2.) Mr. Willmar, Mr. Litchfield, and Mr. Moorhead had an interview after dinner, at which I was not present, and the next day had an interview with the board of directors of the Northern Pacific R. R. Co. at their offices, at which I was not present, and I think the day after or the same evening they went to Philadelphia to have an interview with Jay Cooke, while I remained in New York. On their return from Philadelphia they had another interview with the officers and directors of the Northern Pacific R. R. Co. At the request of Mr. Willmar or Mr. Litchfield, or both, I myself went to the offices of the Northern Pacific R. R. Co. and remained there the greater part of the day, but I was not present at conferences between Mr. Litchfield and Willmar and Moorhead and the officers of the Northern Pacific R. R. Co. I was told by these gentlemen (Mr. Willmar and Litchfield) that the object of these conferences was to resume negotiations for the purchase by the Northern Pacific R. R. Co. of the lines of the First Division Co., which were broken off the year before. In the afternoon of the day which I spent in the Northern Pacific R. R. Co. offices Mr. Willmar came to me and told me they had made an arrangement for the transfer of Mr. Litchfield's interest in these lines to the Northern Pacific R. R. Co. The arrangement contemplated a new issue of bonds, amounting to $15,000,000, by the First Division Company, to be secured by a mortgage by the St. Paul and Pacific R. R. Co. upon the extension lines and the accompanying land grant; that out of the proceeds of said bonds Mr. Litchfield was to have $1,500,000 with which to finish his contract for completing the main line of the First Division Company, being the same contract referred to in my testimony, and requested me to draw a paper which should embody that
306 statement for the parties to sign. I drew such paper, signed it myself as president of the First Division Company; Mr. Litchfield signed it; Mr. Moorhead signed it for the Northern Pacific R. R. Co., and Mr. Willmar signed it for Messrs. Lippmann, Rosenthal & Co., as representing the bondholders.

In this negotiation Mr. Willmer was here, representing Messrs. Lippman, Mr. Rosenthal & Co. and the interests of the bondholders of the First Division Company. He did not represent the First Division Company except so far as he did so in acting as the agent of and representing Messrs. Lippman, Rosenthal & Co. I was informed that the action could not be completed at that time, but that after the signature of this paper Mr. Litchfield and Mr. Willmar would come to Mr. Minnesota with me, for the purpose of looking over the lines and arranging the detail of the transfer on the part of the First Division Company; that another meeting of the directors of the Northern Pacific R. R. Co. would be held in New York in the month following, at which Willmar and Litchfield were to be present, for the purpose of closing the transaction. In a day or two afterward, Mr. Willmar, Mr. Litchfield and myself started West and came to St. Paul, and remained in Minnesota a short time, about a week, when they returned to New York, and they both informed me by letter that they had closed the transaction. I was not present at any of the interviews between Messrs. Litchfield, Willmar and the officrse

of the Northern Pacific R. R. Co. I knew nothing of the details of that arrangement, except as informed by Willmar and Litchfield from time to time, until some months afterwards, when Gov. Smith, president of the Northern Pacific R. R. Co., ascertained from me that I was not aware of the detail of the contract between the parties, and directed Mr. Wilkeson, secretary of the Northern Pacific R. R. Co., to give me a copy of the paper which they had signed. I was informed that at the
307 same time the arrangement was made for the transfer of the stock the arrangement was also made for the negotiation of the loan. It was arranged that the amount of this issue of bonds should be $15,000,000. It was supposed that this issue of bonds was sufficient to raise the funds which would be required to complete the extension lines and pay over to Mr. Litchfield the $1,500,000, and certain installments of interest on previous issues of the St. Paul and Pacific and First Division Companies.

I think Mr. Willmar first informed me that in this arrangement it was contemplated that Mr. Moorhead should be the contractor for building the extension lines. It was in December, 1870, that he informed me, I think. I was not present at any time when the subject of Mr. Moorhead becoming such contractor was discussed between him and Mr. Willmar. I went to New York in January or February, 1871; met Mr. Moorhead in the office of the Northern Pacific R. R. Co., and had frequent interviews with him. There is not impressed on my mind any particular conversation with Mr. Moorhead on this subject of his becoming a contractor until I was in New York in April, 1871, for the purpose of getting the papers ready for this issue of bonds, and closing the contract between the St. Paul and Pacific and the First Division Company in relation to the building of these extension lines, when Gen. Cass, who was then a director of the Northern Pacific R. R. Co., and is now president, at the meetings of the Northern Pacific R. R. Co., the St. Paul and Pacific R. R. Co., and the First Division Company for the purpose of transacting business in relation to these matters, called my attention to the fact that the contract between Mr. Moorhead and the First Division Company for the construction of the extension lines had not been reduced to writing, and thought it should be attended to before we separated; I spoke to Mr. Moorhead about it, who was present, and he requested or suggested that I should prepare the paper, which was conceded by us all must be
308 very general in its terms. I prepared such a paper, submitted it to Mr. Moorhead and Gen. Cass, and they approved it; I laid it before the board of the First Division Company, then and there they approved it and authorized me to execute it in behalf of the company. (Witness shown "Exhibit A" attached to the plaintiff's bill.) The contract of which I speak is the same contract of which Exhibit "A" is a copy. (A copy of said contract is hereunto attached, marked Exhibit No. 3.)

The authority was given me by the board of directors of the First Division Company, in the form of a resolution; that resolution was duly entered upon the records of the company. I have the records of the company containing that resolution in my possession, as president of the First Division Company. I understood that it was insisted by Mr. Willmar, on behalf of Messrs. Lippmann, Rosenthal & Co., that a contract for building the extension lines should be entered into with some responsible party, so that they could assure the persons who might take the bonds that the proceeds of these bonds would be sufficient to complete these extension lines, and that Mr. Moorhead was selected as that responsible party. Mr. Willmar, representing Messrs. Lippman, Rosenthal & Co., required this contract to be entered into as a condition pre-

cedent to their undertaking the negotiations of the bonds. I think I stated at this meeting that this contract was substantially the same as the one entered into with Mr. Litchfield for the construction of the main line by the First Division Company. I did not have the Litchfield contract with me, but adopted its language as far as I could remember. It was perhaps more general in its terms than the Litchfield contract. I think I stated to Mr. Moorhead that it was a formal matter; but I don't recollect that I stated that it was not such a contract as would be drawn by a railroad letting a contract of magnitude to a contractor. This contract was drawn on the spot, to meet the suggestion of Gen. Cass,
309 and for the purpose of enabling Mr. Willmar, of Messrs. Lippmann, Rosenthal & Co., to state that such a contract had been entered into. My recollection is that Mr. Sinnott, who prepared all the papers relating to this transaction, was expected to prepare another contract, to take the place of this, which was never done as far as I know. Nothing at that time, or at any other time, was said to the effect that that contract was not to be a binding contract upon the company or upon Mr. Moorhead.

I recollect Col. Andrew De Graff and Col. Crooks calling on me with reference to taking the contract for the building of these extension lines, at my office in St. Paul in April, 1871; at that interview they stated that they were desirous of making a contract for the building of these extension lines. They represented the firm of De Graff & Co. I told them that, under the arrangement which had been made in New York, Mr. Moorhead was to have the contract for the building of these lines, and that I must refer them to him. I advised them to go and see him, and told them I would give them a letter to him. They had with them the form of a contract such as they desired to make, which they presented. I looked it over, and in my letter to Mr. Morehead, made a suggestion of several alterations which I thought should be made in the form of the contract. In that contract, the First Division of the St. Paul and Pacific R. R. Co. and the firm of De Graff & Co. were the contracting parties; that was one of the subjects to which I called Mr. Moorhead's attention in this letter. (Witness is shown Exhibit "A" annexed to the answer of De Graff & Co.) (A copy of said letter is hereunto annexed, marked Exhibit No. 4.) The letter referred to is one of which Exhibit "A" is a copy. I think I read that letter to them, and gave it to Col. Crooks. I think they took this form or draft of contract with them.

There were advertisements for proposals for building these ex-
310 tension lines; they were advertised in the spring or early summer of 1871; they were advertised here and at St. Cloud, I think, and I don't know but at Minneapolis. Some of these advertisements were signed by me as president of the First Division Company, and I recollect of one for ties, signed by Mr. Lindsley, assistant chief engineer of the Northern Pacific Railroad Company. These advertisements for proposals related to the Brainerd Branch and to the St. Vincent lines. I was directed to have these proposals advertised by Mr. Moorhead or the president of the Northern Pacific Railroad Company; I cannot tell which without examining the papers. I think I signed these advertisements as president of the First Division of the St. Paul and Pacific Railroad Company, but I was acting for Mr. Moorhead in the matter. The object in advertising for these proposals was to let the contract for building these extension lines. Messrs. De Graff & Co. had already furnished proposals, and the object was to see if any other responsible parties would contract at lower rates.

MAY 28, 1875.

Geo. L. Becker, being further examined by defendants, De Graff & Co., says: Since the adjournment yesterday, I have examined the advertisement for proposals for doing the work on the extension lines mentioned in my testimony yesterday, and find that the advertisements called for bids for building the Brainerd Branch only. I think there never was any advertisements for proposals for building any other part of the extension lines, except the Brainerd Branch only.

Mr. Moorhead employed me as his agent to attend to the construction business; to attend to the business generally in the construction of the extension lines. The arrangement was made that I should act as his agent in this construction business in December, 1870. It was arranged when the trade was made with the Northern Pacific R. R. Co., when I was not present, as the parties told me soon afterwards. My du-
311 ties, as Mr. Moorhead's agent, were never very definitely defined. I always acted under his specific instructions. He gave me instructions from time to time in regard to the matters in which I was to act for him, and I often asked instructions of him. I was Mr. Litchfield's agent to carry out for him his contract for building the main line of the First Division Company; my relation to Mr. Moorhead, in the construction of the extension lines, were not at all different from my relations to Mr. Litchfield in the construction of the main line of the First Division Company. The instructions to advertise for the proposals for building the Brainerd Branch were given me at the meeting in New York; I think they were given by Mr. Moorhead, perhaps by Gov. Smith; but it was generally understood by all parties that I should so advertise, and Mr. Moorhead was present. The advertisements stated that the proposals should be given to me. It was understood at a meeting of the Northern Pacific R. R. board of directors that the proposals should be produced at the time of a meeting of that board, which it was understood would be held in Minnesota, and they were afterwards produced. I was, by my instructions, only authorized to collect the proposals. I was not authorized to let any work. Proposals were delivered to me in pursuance of these advertisements. I do not mean to say that they were produced before a meeting of the Northern Pacific R. R. Co's. board of directors, but they were produced before our own board, which met at the same time and place, which was at Minneapolis.

With the bids I produced a schedule of the bids showing the terms, and it was found that the bid of Wallace & Co. was the lowest. There was some question as to who Wallace & Co. were. I stated Wallace had been acting for DeGraff & Co. in the construction of our main line, and I had no doubt at all that DeGraff & Co. stood behind him
312 in the making of the bid. Crooks and Col. Andrew De Graff were both at the same hotel when the meeting was held. It was suggested that I should see them and ascertain whether such was the fact. I did see them at once. They acknowledged the bid to be their bid. I asked them to go with me to the room where our board were in session for the purpose of conferring in relation to it. They went with me to the room and a consultation was had, more particularly with Gov. Smith, in relation to the terms and conditions of the bid, and it resulted in the passage by our board of a resolution accepting the bid of Wallace & Co. My impression is that the bid was accepted as rendered, but explanations were made as to the work intended to be included in the bid, and the president of the First Division Company was instructed to make a contract with Wallace & Co. for the construction of the Brau-

erd Branch. A copy of the resolution appears on pages 9 and 10 of the printed bill of the complaint. (A copy of said resolution is hereunto annexed, marked Exhibit No. 5.)

Nothing was, as a matter of fact, done under that resolution to my knowledge. I have been continuously president of the First Division Company since 1864. I entered into no contract with any one for the building of that road except Mr. Moorhead. After the passing of that resolution I had nothing further to do in relation to the letting of a contract to Wallace & Co., or DeGraff & Co. I never, as president of the company, asked Mr. Moorhead to act for me in any manner in the letting of a contract for the building of the Brainerd Branch.

I did not participate in any manner in the letting of the contract for the building of the St Vincent extension. I was never instructed to make any other contract for the construction of the St. Vincent extension except the contract with Moorhead. I never solicited proposals from any one for building the St. Vincent extension by advertisement or otherwise. DeGraff & Co. did not, nor did any one else, ever make any proposals to me about building the St. Vincent extension, exccept as I
313 have stated in my testimony. I do not know when or to whom proposals were made by DeGraff & Co. for building the St. Vincent extension; all I know about it was told me by other persons. After DeGraff & Co. had made their proposals for building the St. Vincent extensions I was not consulted as to whether the contract should be given to them or not. The first I knew of the contract with DeGraff & Co. for building the St. Vincent extensions, the contracts were sent to me by Mr. Moorhead, executed by him, to be executed by De Graff & Co.; they were in duplicate, and I don't know but triplicate. They were executed and one copy sent to Mr. Moorhead, one retained by DeGraff & Co.; I don't know but I had one; I either had one or a copy; my impression is it was a copy. Before receiving those contracts executed by Mr. Moorhead from him, I had not, I think, learned from any one the terms of the contracts with De Graff & Co. I was instructed by Mr. Moorhead, at the time I received these contracts, to get them executed by DeGraff & Co. and return one to him and leave a duplicate with DeGraff & Co. I was not consulted by Mr. Moorhead as to the propriety of making these specific contracts with DeGraff & Co. I have no doubt he consulted with me in regard to entering into a contract with that firm, but this reference pertained to the character of the work and their ability to perform it, and not to the terms of the contract. Mr. Moorhead never was, that I am aware of, employed to act as agent of the First Division Co. in regard to the construction of these extension lines. Mr. Moorhead was never employed by the First Division Co. to make contracts with DeGraff & Co. or any one else for the construction of these extension lines.

Since the transfer of the stock of the First Division Company to the Northern Pacific R. R. Co., there has been but one meeting of the
314 board of directors of the First Division Company, at which I was not present. That was held in New York December 9, 1870. I have in my custody the record of the proceedings of that meeting. (A copy of the record produced.)

(A copy of said minutes is hereunto attached, marked Exhibit No. 6.)

At no meeting of the directors of the First Division Company since this transfer of stock to the Northern Pacific R. R. Co. has the subject of making Wm. G. Moorhead agent of the company for the construction of the extension lines of the St. Paul & Pacific R. R. Co. been discussed, to my knowledge, Since the purchase of the stock of the First

Division Company by the Northern Pacific R. R. Co. I have never heard the subject of making Mr. Moorhead agent of the First Division Company for the construction of these extension lines discussed among the directors or officers of the First Division Company. As president of the First Division of the St. Paul and Pacific R. R. Co., my powers and duties are and have been such as ordinarily pertain to that office in other companies. I have the general management and direction of its affairs, subject to such orders as the board of directors may give me from time to time. If Mr. Moorhead had ever been authorized by the First Division Company to act as its agent about the construction of these extension lines I should have known it. I don't think I ever knew of Mr. Moorhead acting in the name of the First Division of the St. Paul and Pacific R. R. Co. in relation to the construction of these lines. My duties, as Mr. Moorhead's agent, in relation to the construction of these lines, were to disburse the moneys which were paid out here, see that the contracts were executed according to their tenor, and generally to execute Mr. Moorhead's directions in relation to them. My duties were never very specifically defined, but I acted as his agent generally with reference to this work. I acted in the name of Wm. G. Moorhead in what I did in reference to the construction of these extension
315 lines. Mr. Moorhead did not as agent make any report to the president or officers of the First Division Company in reference to the construction of these extension lines.

(The attention of witness is called to Exhibits D and E, attached to complainant's bill, and to Exhibit No. 23, attached to the printed copy of the plaintiff's testimony, and the witness is asked to explain his understanding and the intention of those letters.

Copies of said documents are hereto annexed, marked respectively Exhibit No. 7, Exhibit No. 8, and Exhibit No. 9.)

I understood that in the construction of these lines Mr. Moorhead was acting for the Northern Pacific R. R. Co., but the resolution of that board as set forth in Exhibit C, attached to the plaintiff's bill, never came to my knowledge until I saw them printed with that bill.

(A copy of said resolutions, which were passed by the board of directors of the Northern Pacific Railroad Company, is hereto annexed, marked Exhibit No. 10.)

I was informed by Gov. Smith, president of the Northern Pacific R. R. Co., by letter, in the summer or fall of 1871, that there was to be attached to the contract between Mr. Moorhead and the First Division Company a declaration of trust by Mr. Moorhead, but of the terms and conditions of that trust I was never informed; the trust was to be in favor of the Northern Pacific R. R. Co.; but whether such declaration of trust was ever made or not I do not know. I inferred from this, and from other conversations in connection with it, that Mr. Moorhead, in his contract with the First Division of the St. Paul and Pacific R. R. Co., was acting as the agent of the Northern Pacific R. R. Co. instead of acting for himself, and for this reason in my letter annexed to plaintiff's bill, as Exhibit E, I stated that the accounts were kept in his name for convenience only, and not with any idea of fixing any responsibility upon him. I was led to believe, and did believe, that it was a part of the arrangement entered into between Mr. Willmar, Mr. Litchfield, and the Northern Pacific R. R. Co., at the time the transfer of stock took place, in December, 1870; that the object of the arrangement was to give Mr. Moorhead the power and the authority to let the contracts
316 for the construction of the lines, for the disbursement of the moneys realized from the loan, and the general direction of the

business connected with it; at any rate that was the effect of the arrangement. It was supposed at the time of the arrangement for the issuing of the $15,000,000 of bonds, that they would produce ample means for the purpose of carrying out the purpose for which the loan was made, and that probably there would be a considerable surplus. There was no understanding outside of what appears on the face of the papers, which was, that the entire proceeds of the bonds should be paid over to Mr. Moorhead. There was no understanding that Mr. Moorhead should in any event account for any surplus which might remain after the completion of the lines to the First Division Company that I am aware of.

May 29, 1875.—Examination of Geo. L. Becker being resumed, he says: Mr. Moorhead had an engineer in charge of the work on the extension lines. It was C. A. F. Morris, chief engineer of the First Division Co. and of the St. Paul and Pacific R. R. Co. He was in charge with a corps of engineers on the extension lines. Mr. Morris and his engineers, on the extension lines, were paid out of the funds that were sent here by Mr. Moorhead as construction agent. They were not paid by the First Division Co. I cannot give the exact date that Mr. Morris was employed by Mr. Moorhead to take charge of the construction of the extension lines; it was in the winter or spring, 1871. Mr. Morris was employed through me for Mr. Moorhead. Mr. Moorhead authorized me to employ a chief engineer and assistant engineers for the work. He continued to act for Mr. Moorhead as chief engineer on the extension lines until the suspension of the work. The duties of Mr. Morris as chief engineer in charge of the works on the extension lines were separate and distinct from his duties as chief engineer of the First Division Co. The engineer, by the aid of his
317 assistants, made up a statement of the work done and materials furnished by DeGraff & Co. each month at the close of the month, and generally made up an estimate of the probable amount before the close of the month, to ascertain the amount of money which would be required. This approximate estimate was forwarded to Mr. Moorhead as soon as it could be obtained, and was followed by the regular monthly estimate, which was generally obtained by the fifth or tenth of the month following the month in which the work was done, the object being to have the money here to pay over by the 15th of the month following that in which the work was done and materials furnished. These regular monthly estimates were made in triplicate, one of which was sent to Mr. Moorhead, one given to DeGraff & Co., and the other to me. The estimate which went to Moorhead was delivered to me by the engineer, and I forwarded it to Mr. Moorhead. I sent to Mr. Moorhead one of each of all the estimates rendered by the engineer immediately after it was rendered. (The attention of the witness is called to the printed copy of a letter annexed to complainant's bill, and found pages 57 and 58.)

(A copy of said letter is hereunto annexed, marked Exhibit No. 11.)

That letter was prepared at the instance of Mr. Moorhead; he dictated the phraseology of it. (Attention of witness called to the closing paragraph.) That paragraph was put in the letter at the suggestion of Mr. Moorhead; he desired it to be in there. The draft of that letter was I think, prepared in the banking office of Jay Cooke & Co., New York. It was drafted by some employé in the office of Jay Cooke & Co., and not by my dictation. I brought the draft to St. Paul and copied it; had it attested by the secretary and the seal of the company attached to it, and then forwarded to Mr. Moorhead.

(Attention of the witness called to printed copy of a resolution annexed to the complainant's bill, and found on page 58 of the printed bill.

A copy of said resolution is hereunto annexed, marked Exhibit No. 12.)

318 That resolution was passed in Chicago, September 17, 1872. That meeting convened on purpose for the passage of that resolution at Chicago. It was a meeting of the board of directors of the First Division Company. Mr. Moorhead told me that the first power given was not deemed sufficient, and that it was necessary to have a meeting of the board of directors of the First Division Company. I could get no quorum here unless some of the directors would come here; it was not convenient for me to go to New York. Mr. Moorhead informed me that he and Mr. Wright would be in Chicago at that time, and requested me to come there with Mr. Campbell, who resides here, one of our directors, and Mr. Breed, secretary of the company. I accordingly met them in Chicago for the purpose of holding this meeting.

I do not know who suggested giving the authority to Mr. Moorhead set forth in that letter and resolution. It was not suggested by me.

No part of the iron mentioned was then in the company's possession; I don't know in whose possession it was. No part of this iron had been purchased by the company; I don't know by whom it was purchased. No bill of lading, or shipping bill, of this iron was in possession of the First Division Company. I think I understood from Mr. Moorhead the iron was bought—I understood from him it was bought in England through the agency of Leon Willmar; the greater part of it of Robert Benson & Co., and one small lot Jay Cook, McCulloch & Co. The First Division Company never authorized Mr. Willmar to buy this iron. I think that Mr. Moorhead informed me that in the arrangement Mr. Willmar insisted that he should buy the iron. No part of this iron, that I am aware of, was consigned to the First Division Company. I don't know that the First Division Company ever claimed to own this iron. I never saw any of the original bills of lading of this iron. No report was ever made by Mr. Moorhead, or any other person than him, of the

319 purchase of this iron. If such report had been made, I think I should have known it. The reason that this letter was given and the resolution was passed was, that Mr. Moorhead said it was necessary in order to raise money, and we wanted to raise the money in order to pay off the contractors here.

The First Division has always maintained a regular organization since it was first organized in February, 1864, consisting of a president, board of directors, secretary, and treasurer, and such other officers as are usual and are necessary to conduct its business. It always transacted its business through its own organization; no authority was ever given by that company to the Northern Pacific R. R. Co., its directors, or any committee of them, to transact its business in relation to the construction of the extension lines, that I am aware of; I should have known it if any such authority had been given. I never knew of the board of directors of the Northern Pacific R. R. Co., or any committee of it, acting in the name of the First Division Co., in regard to the transaction of business in relation to the construction of the extension lines. After the purchase of the stock of the First Division Co. by the Northern Pacific R. R. Co., on occasions when meetings of the boards of directors of the two companies were held at the same time, the meetings were always held separately. In Minneapolis when the two companies held a meeting there at the same time they were held in different rooms. When a meeting of our

board was held in New York City it was held at the office of the Northern Pacific R. R. Co.; usually, I think, always after the adjournment of the meeting of the Northern Pacific board of directors. The meetings were not held promiscuously. When the arrangement was made for the construction of the extension lines there was a reason why it should be done expeditiously; the time to complete the road was limited by act of Congress, and I think by an act of the State legislature; by
320 act of Congress to March 3, 1873. After De Graff & Co. commenced work on the extension lines, it was prosecuted with all due diligence, with a view and for the purpose of completing it within the time limited. If the funds had been furnished in accordance with the contract of De Graff & Co. I know of no reason why they would not have been able to complete it within the time. De Graff Co. commenced work under their contract as soon and as fast as the work was ready for them.

June 3, 1875. GEO. L. BECKER, being again produced, further testifying, said: (Witness shown paper marked Exhibit F.) That is a copy of the resolution which was passed by the board of directors of the First Division of the St. Paul and Pacific R. R. Co., at a meeting held at the office of the Northern Pacific R. R. Co. in the city of New York on the 10th day of May, 1871; it is the same one referred to by me in my testimony as passed by the board of directors of the First Division Company, authorizing me to enter into a contract with Mr. Moorhead for the construction of the extension lines of the St. Paul and Pacific R. R. Co.

Question. Was the draft of contract referred to in that resolution the same which, when afterwards signed, became the contract, Exhibit A, attached to the bill?

Answer. It was.

This copy of resolution was taken from the records of the company.

(A copy of said document is hereunto annexed, marked Exhibit No. 13.)

(Paper marked Exhibit G shown witness.) That is the copy of the contract made with E. D. Litchfield, for the construction of the main line of the First Division Company, referred to in my testimony.

(A copy of said document is hereunto annexed, marked Exhibit No. 14.)

321 (Paper marked Exhibit H shown witness That is the printed.) advertisement for proposals for the construction of the Brainerd Branch, referred to in my testimony.

(A copy of said document is hereunto annexed, marked Exhibit No. 15.)

Geo. L. Becker—cross-examination:

Saturday, June 12, 1875. The parties appeared by their solicitors. The cross examination of Geo. L. Becker being commenced, he says: The Northern Pacific Co. sold its stock, First Division St. Paul and Pacific R. R. Co., to E. D. Litchfield, of London, in April or May, 1874. The construction of the main line of the First Division of the St. Paul and Pacific R. R. Co. was contemplated, I think, in 1871. I was informed by the parties in interest that it was arranged, understood, and agreed that out of the $15,000,000 loan for the extension lines, $1,500,000, or so much thereof as might be necessary, was to be furnished to Mr. Litchfield to complete the main line of the St. Paul and Pacific R. R. Co., and that out of said loan provision should be made as far
322 as it was necessary to pay the interest upon the previous bonds

of the First Division Co., and upon the bonds of the St. Paul and Pacific R. R. Co., which the First Division Co. had assumed. I don't think any of the interest was fixed; what was necessary was to be paid out of this loan. The net earnings of the road were first to be applied, and the balance made up out of this loan. The bankers Lippmann, Rosenthal & Co. were to receive from the proceeds of the sale of the bonds £40 sterling for each bond of $1,000, to pay the interest for three years. The rate of interest was 7 per cent. semi-annually. The agreement or understanding was arrived at Dec. 1870, when the arrangement was made in New York between Mr. Litchfield, Mr. Willmar, and the Northern Pacific R. R. Co. I was informed of this understanding and agreement by Mr. Willmar and Mr. Litchfield, in personal interviews I had with them in New York, about the time it was made, and afterwards by Mr. Moorhead and Mr. Smith, prest. N. P. R. R. Co., in my intercourse with them. The entire $1,500,000 agreed to be applied to the construction of the main line was required, called for, and paid. My impression is that the first 100,000 pounds sterling, or $100,000, am not certain which, went a large portion of it to Lippmann, Rosenthal & Co., to repay advances alleged to have been paid by them to Litchfield. On examination I find orders were given for the payment of interest of the bonds of the First Division Co., as stated in paper here presented and marked Exhibit O, and hereto attached. These bonds for which said orders for interest were so given were $2,800,000 Branch line; $3,000,000, line from St. Anthony 150 miles west; $6,000,000 on line from St. Anthony to Breckenridge; the dates of which issue of bonds was as given in Exhibit O.

(A copy of said document is hereunto annexed, marked Exhibit No. 16.)

This testimony objected to by defendant as immaterial. Defendant, DeGraff & Co.

323 These bonds all drew interest at the rate of 7 per cent., payable semi-annually. These bonds were the greater part held, I suppose, in Holland. The 40 pounds sterling to be applied to the payment of each $1,000 bond was retained for that purpose by Messrs. Lippmann, Rosenthal & Co., in Holland. My recollection is that the 40 pounds retained from each bond were to be invested in U. S. securities which were to be sold and applied as occasion required. Of the proceeds of these $15,000,000 bonds issued, $28,640.95 were applied to the purchase of land condemned for the use of the First Division Company, on the levee, in the city of St. Paul. Lippmann, Rosenthal & Co., in the negotiation of these $15,000,000 bonds, were the financial agents of the First Division Company; in the previous issue of the First Division Company bonds they acted as the agents of Mr. Litchfield in negotiating them, Mr. Litchfield being the contractor and receiving the bonds for the work. Leon Willmar, of London, was the agent of Messrs. Lippmann, Rosenthal & Co. I suppose the arrangement was made with Mr. Leon Willmar, agent of Lippmann, Rosenthal & Co., for the negotiation of these $15,000,000 of bonds, while he was in this country, in November or December, 1870. Some of the papers were not executed until the next spring or summer. My recollection is, that Lippmann, Rosenthal & Co. sent over a formal paper prepared by them, embodying the terms of the arrangement for the negotiation of the bonds by them, to be executed by the officers of the First Division of the St. Paul and Pacific R. R. Co., and I don't know but Mr. Moorhead. (Paper shown witness.) That is a copy of a letter from Messrs. Lippmann, Rosenthal & Co. to the First Division of the St. Paul and Pacific R. R. Co., ac-

knowledging the receipt of the papers to which I have just referred, dated Amsterdam, May 19, 1871.

Copy marked and hereto attached, admitted in evidence.

(A copy of said document is hereunto annexed, marked, Exhibit No. 17.)

324 The contract of DeGraff & Co., dated Oct. 2, 1871, embraced the line from Watab to Brainerd commonly called the Brainerd Branch, wholly east of the Mississippi River. The contract of Oct. 5, 1871, commenced at the west end of the bridge over the Mississippi River at St. Cloud, and extends to the crossing of the Northern Pacific R. R.

Question. With regard to the St. Vincent extension, where was the eastern terminus of that line?

Answer. It commenced at East St. Cloud, where it leaves the branch line of the First Division of the St. Paul and Pacific R. R. Co.

The construction of the bridge over the Mississippi River at St. Cloud was embraced in the arrangement made with Mr. Moorhead, but was not within the contracts heretofore mentioned in this case with DeGraff & Co. The bridge over the Mississippi River at St. Cloud was constructed by De Graff & Co. as contractors. I presume I have the contract for the construction of the St. Cloud bridge by DeGraff & Co. I presume I have it among my papers.

It was in the spring of 1872 that the line of the St. Vincent extension was finally and definitely located at the crossing of the Mississippi River where the bridge was built as now constructed. In the spring or summer of 1872, I received $65,000 of the bonds of the municipality of the city of St. Cloud, to aid in the construction of that bridge. There was a rivalry between the city of St. Cloud and Sauk Rapids to secure the crossing at their localities respectively. I sought aid from those rival localities for the construction of that bridge; those efforts and negotiations to secure aid were after May, 1871. I never accounted to Mr. Moorhead for these bonds. I notified him I had them. I don't believe they ever went into his account. The bonds are pledged to the First National Bank of this city, originally for the payment of two notes, the greater part of one of which has been paid, I believe. They were notes of the First Division of the St. Paul and Pacific R. R. Co., and the proceeds of the notes were used for that company. Those bonds are still held by the First National Bank of St. Paul, as collateral security for the payment of the paper of the First Division of the St. Paul and Pacific R. R. Company. I don't think the formal notice to De Graff & Co. to suspend work came from me. I can find nothing in my papers in relation to it. I have looked to see if I could.

The payee named in said bonds was the St. Paul and Pacific R. R. Co., or bearer.

325 Fourteen several estimates of work done and materials furnished by De Graff & Co. under the said contracts, Exhibits Nos. 22, 23 and 24, were duly made by the chief engineer in charge of such work. The same were introduced in evidence by De Graff & Co. in the suit in which the deposition of the said Becker was originally taken, as Exhibit C, Nos. 1 to 14.

(Copies of such estimates are hereunto annexed, marked Exhibit No. 26.)

Witness shown Exhibit C, Nos. 1 and 2.

Question. Do you know J. Spaulding, whose name is signed to the vouchers as the engineer making them?

Answer. I know Gen. Spaulding. I think at the time those vouchers were made Gen. Spaulding was the engineer in charge of the work men

tioned in the vouchers. They were sent to me by mail from Gen. Spaulding.

My impression is, that Gen. Spaulding sent the estimates to Mr. Morris, and he gave me a copy for my own use and one for me to send to Mr. Moorhead, and that he also furnished De Graff & Co. with a copy.

The Northern Pacific Co. sold its stock, First Division St. Paul & Pacific R. R. Co., to E. D. Litchfield, of London, in April or May, 1874. The construction of the main lines of the First Division of the St. Paul & Pacific R. R. Co. was contemplated, I think, in 1871. I was informed by the parties in interest that it was arranged, understood, and agreed that out of the $15,000,000 loan for the extension lines, $1,500,000, or so much thereof as might be necessary, was to be furnished to Mr.
326 Litchfield to complete the main line of the St. Paul and Pacific R. R. Co., and that out of said loan provision should be made as far as it was necessary to pay the interest upon the previous bonds of the First Division Co., and upon the bonds of the St. Paul & Pacific R. R. Co., which the First Division Co. had assumed. I don't think any of the interest was fixed; what was necessary was to be paid out of this loan. The net earnings of the road were to be first applied, and the balance made up out of this loan. The bankers, Lippmann, Rosenthal & Co., were to receive from the proceeds of the sale of the bonds £40 sterling for each bond of $1,000, to pay the interest for three years. The rate of interest was 7 per cent. semi-annually. The agreement or understanding was arrived at Dec., 1870, when the arrangement was made in New York between Mr. Litchfield, Mr. Willmar, and The Northern Pacific R. R. Co. I was informed of this understanding and agreement by Mr. Willmar and Mr. Litchfield, in personal interviews I had with them in New York, about the time it was made, and afterwards by Mr. Moorehead and Mr. Smith, pres't, N. P. R. R. Co., in my intercourse
327 with them. The entire $1,500,000 was agreed to be supplied in the construction of the main line, was required, called for, and paid. My impression is that the first 100,000 pounds sterling, or $100,000 —am not certain which—went, a large portion of it, to Lippmann, Rosenthal & Co., to repay advances alleged to have been paid by them to Litchfield. On examination I find orders were given for the payment of interest of the bonds of the First Division Co., as stated in paper here presented and marked Exhibit O, and hereunto attached. These bonds, for which said orders for interest were so given, were $2,800,000 branch line; $3,000,000 lien from St. Anthony 150 miles west; $6,000,000 on line from St. Anthony to Breckenridge; the dates of which issue of bonds was as given in Exhibit O.

The amount thus disbursed for interest was in all the sum of . These bonds all drew interest at the rate of 7 per cent., payable semi-annually. These bonds were the greater part held, I suppose, in Holland. The 40 pounds sterling to be applied to the payment of each $1,000 bond was retained for that purpose by Messrs. Lippmann, Rosenthal & Co., in Holland. My recollection is that the 40 pounds retained from each bond were to be invested in U. S. securities, which were to be sold and applied as occasion required. Of the proceeds of these $15,000,000 bonds issued, $28,640.95 were applied to the purchase of land condemned for the use of the First Division Company, on the levee, in the city of St. Paul. Lippmann, Rosenthal & Co., in the negotiation of these $15,000,000 bonds, were the financial agents of the First Division Company; in the previous issue of the First Division Company bonds they acted as the agents of Mr. Litchfield in negotiating them, Mr. Litchfield being the contractor and receiving the bonds for the

328 work. Leon Willmar, of London, was the agent of Messrs. Lippmann, Rosenthal & Co. I suppose the arrangement was made with Mr. Leon Willmar, agent of Lippmann, Rosenthal & Co., for the negotiation of these $15,000,000 of bonds, while he was in this country, in November or December, 1870.

Question. State whether, if Lippmann, Rosenthal & Co. had sold all the bonds of the $15,000,000 loan in accordance with the terms of their contract, there would not have been enough funds provided to effectuate all the purposes of the loan, and to have a surplus besides.

Answer. I think there would have been enough to have completed the road, and I think something over. (Letter, Exhibit No. 27, shown witness.) The body of this letter as well as the signatures is the handwriting of L. Willmar. (Exhibit No. 28.) The signature of this letter is mine. (Exhibits 27 & 28 offered in evidence and hereto attached. Objected to by De Graff & Co., as immaterial.)

Out of the proceeds of the $15,000,000 loan, in addition to the sums paid for real estate on the levee in St. Paul, about $15,000 were used for the payment for ties to be used on the First Division of the St. P. & P. R. R.

329 I have the receipts of DeGraff & Co. for payments on account of labor done on extension lines. These payments were as follows; they are all signed in the proper handwriting of DeGraff & Co.:

Dec.	18, 1871.	Brainerd branch	$63,180 00
Jan.	4, 1872.	" "	36,450 00
Jan.	22, "	" "	11,568 60
Jan.	22, "	St. Vincent extension	49,651 76
Feb.	15, "	" "	12,813 20
Feb.	20, "	Brainerd branch	10,146 60
Feb.	20, "	St. Vincent	77,407 34
March	16, "	"	102,776 98
April	1, "	Brainerd branch	14,368 50
April	19, "	" "	8,860 32
April	19, "	St. Vincent	88,600 06
May	16, "	"	43,837 39
May	20, "	Brainerd branch	8,555 79
May	20, "	St. Vincent extension	11,015 51
June	29, "	Brainerd branch	6,434 64
June	29, "	St. Vincent extension	198,157 95
July	24, "	" "	1,139 86
July	24, "	Brainerd branch	3,074 19
July	31, "	St. Vincent extension	304,134 13
Oct.	1, "	On account estimate for July	100,000 00
Oct.	15, "	" " "	55,000 00
Dec.	17, "	" " "	50,000 00

These 22 receipts are the originals.

The first 19 mentioned of which are on printed blanks. The remaining three are in the words and figures following:

"Rec'd, St. Paul, Oct. 1, of the St. P. & P. R. R. Co., one hundred thousand dollars, on account of estimate for July.

"DEGRAFF & CO."

"OFFICE OF DEGRAFF & CO., CONTRACTORS,
"*St. Paul, Minn., Oct. 15th*, 1872.

"Received of Saint Paul & Pacific R. R. Co., per J. H. Randall, fifty-five thousand dollars, on account of July estimate.

"DEGRAFF & CO.,
"Per M. M. WILLIAMS."

"THE FIRST DIVISION OF THE ST. PAUL & PACIFIC
"RAILROAD COMPANY, PRESIDENT'S OFFICE,
"*St. Paul, Dec.* 17, 1872.

"GEORGE L. BECKER, *President.*

"Received of Wm. G. Moorhead, construction agent, by hands of
330 George L. Becker, fifty thousand dollars on account.

"DEGRAFF & CO.,
"Per N. DEGRAFF."

Redirect examination:

Question. State whether, if Lippmann, Rosenthal & Co. had sold all the bonds of the $15,000,000 loan in accordance with the terms of their contract, there would not have been enough funds provided to effectuate all the purposes of the loan and to have a surplus besides.

(Objected to by plaintiff's solicitors as immaterial and not a subject of a direct examination.)

Answer. I think there would have been enough to have completed the road, and I think something over.

The original direction for Lippmann, Rosenthal & Co. to pay interest on the prior issue of bonds of the First Division Co. came through Mr. Willmar, from Mr. Moorhead, to me. Those directions came first about the dates the orders were given. The payment of this interest was necessary to enable them to negotiate the $15,000,000 loan. The $15,000,000 loan could not be negotiated unless this interest was paid. The First Division Co. had no funds outside of this loan to meet the interest.

Attention of witness called to Exhibit A, annexed to plaintiff's bill, and asked whether any authority, either verbal or written, was ever given by the First Division Co. to Wm. G. Moorhead to act in reference to the construction of the extension lines of the St. Paul and Pacific R. R., other than embodied in the contract of which the said exhibit is a copy.

(A copy of said document is hereunto annexed, marked "Exhibit No. 3.")

Answer. I am not aware of any, unless it may be in the resolution of the company in regard to the iron, for the sale or hypothecation of the iron passed in Sept., 1872.

Question. State whether if any other authority, either verbal or written, had been given, you would have known it.

(Same objection as last above.)

Answer. I would.

Question. Prior to the sale of the stock by Litchfield, of the First Division Co., to the Northern Pacific R. R. Co., or during the negotiation for that purpose, did you ever hear the subject mentioned by any officer or director of the First Division Co. of constituting Wm. G. Moorhead the agent of the First Division Co. for the construction of the extension lines?

(Objected to as not the subject of a re-examination, and as incompetent and immaterial.)

Answer. I did not.

331 The witness is asked if he has with him the letters referred to in the prior part of his examination as having been received from Gov. Smith in the summer of 1871, stating that a declaration of trust was to be annexed to Mr. Moorhead's contract for the construction of the extension lines.

Answer. I have.

(Letter produced and offered in evidence.)

"NEW YORK, *June* 21, 1871.

"Hon. GEO. L. BECKER:

"DEAR SIR: I understand from Gen. Cass that the contract between the St. Paul and Pacific and Mr. Moorhead was drawn up, whether executed or not he does not know. I regret that it was not submitted before it was executed (if, indeed, it has been executed). Will you please bring it with you; and if not executed, defer its execution until after the meeting. There is to be a declaration of trust upon it before it can be completed; and I think the board should pass upon it. Papers relating to the mortgage have all been submitted by Mr. Sinnott, as requested by Mr. Willmar, and accepted by the board.

"I am, sincerely yours,

"J. GREGORY SMITH."

Question. State what board is referred to in the letter.

(Objected to as incompetent.)

Answer. I suppose he refers to the board of directors of the Northern Pacific R. R. Co. It had prior to its execution been submitted to the board of directors of the First Division Company. Mr. Smith was then president of the Northern Pacific R. R. Co.

332 *Testimony of C. A. F. Morris.*

JUNE 2, 1875.

CHARLES A. F. MORRIS, a witness produced on the part of the defendants, DeGraff & Co., being first duly sworn, deposes and says: I am a civil engineer; have been contractor part of the time; have been engaged in the business of civil engineer thirty years. During that time have devoted my attention chiefly to railroad construction. Have resided in St. Paul, Minn., a little over twenty years; twenty years in August last past. I am chief engineer of the First Division of the St. Paul and Pacific R. R. Co.; have occupied that position since 1862, except an interval of about eighteen months in 1865, 1866, when I was contractor on Winona branch of St. Paul and Pacific R. R. Co., now called St. Paul and Chicago R. R. I was appointed engineer of the St. Paul and Pacific R. R. Co., and that appointment has not been revoked, though I am not actively engaged in the duties of the office, and receive no salary; was appointed chief engineer of the St. Paul and Pacific R. R. Co.; am not positive whether it was in 1870 or 1871. I am acquainted with the lines of road commonly known as the extension lines of the St. Paul and Pacific R. R. I was the chief engineer in charge of the location and construction of those lines. I think my connection with those lines, as chief engineer, commenced in fall of 1870 or spring of 1871. It was before the lines were located; permanently located. I continued in charge of that work as chief engineer until the work was finally suspended. I had under me a large corps of assistant engineers. My duties as chief engineer in charge of the extension lines were separate

and distinct from my duties as chief engineer of the First Division Co. My appointment from the St. Paul & Pacific R. R. Co. placed me in the position of chief engineer in charge of the construction of the extension lines. I was paid for my services as chief engineer in charge of the construction of the extension lines by Mr. Moorhead, through the agency of Mr. Randall, the assistant treasurer. There were beside me and assistants under me, engineers in charge of the construction of the Brainerd branch for a short time. In the fall of 1871, Mr. Becker, on consultation with the officers of the Northern Pacific Railroad Company, consented to allow the engineering of the Brainerd line to be managed by Col. Milner Roberts, chief engineer of the Northern Pacific R. R., and D. C. Lindsley, assistant chief engineer. At that I transferred all the instruments, notes, and equipage of the St. Paul and Pacific R. R. to their charge, pertaining to the Brainerd Branch. That was just about the time of the commencement of the construction of the St. Vincent extension. I don't know how long Mr. Roberts remained in charge; it was until some time in 1872; he always acted in capacity of consulting engineer. I resumed my position of chief engineer of the Brainerd Branch some time in the fore part of the summer of 1872. The work which I did as engineer of the extension lines was paid for separately from that which I did for the First Division Company, and the accounts were kept separately. I received occasional instructions from Mr. Moorhead, while engaged on the extension lines, and worked subject to his instructions. He communicated with me quite frequently as chief engineer.

333 I went over the main line of the First Division Co. with Mr. Moorhead in 1871, in the summer, and he instructed me to build the St. Vincent line the same as the main line—the general character of the construction to be the same as the main line and he would be satisfied.

Cross-examination:

My appointment as chief engineer of the St. Paul and Pacific R. R. for the extension lines was in writing, under the seal of the company, and my recollection is that it was made in May, 1871. The signature of Edmund Rice is to it as president of the company. I had commenced the discharge of the duties of such engineer before I received the official appointment. I commenced some time in the fore part of the spring of 1871. The first work I did in that employment was in making the preliminary line from Sunk Rapids to Oak Lake, the junction of the Northern Pacific R. R., by Otter Tail, also on the Brainerd line north from Sunk Rapids. I started the preliminary line from Sunk Rapids to Oak Lake by Otter Tail, I think, in April, 1871. That line was started and run by direction of Gen. Becker, president of the First Division of the St. Paul and Pacific R. R. Co. The running of that preliminary line was never completed. We were ordered to give it up and take a new direction for the line. Mr. Moorhead and Mr. Becker ordered this. This order was made in August, 1871, about the time the directors had a meeting at Minneapolis. That order was not in writing, it was verbal. I think I received some instructions from Mr. Moorhead in writing, but am not quite sure. I did not give any receipts for the payments of my salary as chief engineer of the extension lines. I and my corps of engineers were kept on the pay rolls of the St. Paul and Pacific R. R. on account of Wm. G. Moorhead. A number of them, as I recollect, were —St. Paul and Pacific, Wm. G. Moorhead, construction agent, and a number St. Paul and Pacific R. R., on account of Wm. G. Moorhead.

My compensation as chief engineer of the St. Paul and Pacific R. R. for the extension lines was not fixed. I was engaged in engineering for those extension lines previous to 1871. I think I run a preliminary line in 1870. I run two preliminary lines up to Glyrodon, and I think I run one in 1870. Besides, I furnished maps and preliminary estimates for the company.

334 *Testimony of Andrew De Graff.*

MAY 29,

ANDREW DE GRAFF, a witness produced and sworn on the part of the plaintiff, after being sworn, says:

I am the father of Chas. A. De Graff, of the firm of De Graff & Co. I live in Dayton, Ohio. Since 1858 I have resided more or less in Minnesota; I suppose I have spent about a half of each year, on an average, in Minnesota since 1858. My business has been that of a railroad contractor for the last 42 years. I was engaged in that business in Minnesota from 1858 to 1868, or thereabouts. Since 1868, my son, Charles A. De Graff, has been actively engaged in that business. He succeeded me in the business. I am acquainted with the history of the construction of the extension lines of the St. Paul & Pacific R. R.

Since the first formation of the firm of DeGraff & Co. I have assisted them constantly with my advice and experience, to the best of my ability. I have, since 1868, acted frequently for my son, Charles A., with reference to this business of railroad construction. I acted for him largely in the construction of the main line of the First Division Company. I also acted largely for the firm of DeGraff & Co. in the construction of that main line. I was well acquainted with the facts relating to the construction of those lines by DeGraff & Co. Litchfield, E. D. Litchfield, of London, England, was the contractor with the First Division of the St. Paul and Pacific R. R. Co. in the construction of its main line and DeGraff & Co. were the contractors with Mr. Litchfield for the construction of that line. I knew of the fact that Litchfield was contractor for the building of the main line with the company, and he contracted with DeGraff & Co. to do the work. I knew of the time it was contemplated to build the extension lines of the St. Paul and Pacific Railroad. It was first contemplated to build these in the latter part of 1870 or first of 1871. In the fore part of 1871 the firm of DeGraff & Co. were anxious to obtain the contract for the building of those lines. In connection with Col. Crooks I waited on Gen. Becker with reference to obtaining the contracts to build those lines. I recollect the time when Gen. Becker gave a letter to Col. Crooks.

DeGraff & Co. were anxious to get the contract, and as Mr. Becker was president of the road, we called to see him in regard to it several times, and at the date of that letter Mr. Becker said Mr. Moorhead stood in the same shoes that Litchfield did in relation to the road from Darwin to the Red River, viz, the main line of the First Division. I said: "Mr. Becker, say that over again." And he said that Mr. Moorhead had the contract for building these extension lines, the same as Mr. Litchfield had on the other.

I said: "If that is the case, Mr. Becker, give us a letter to Moorhead."

He did give us the letter, and Crooks and myself went to Philadelphia to see Mr. Moorhead. We met Mr. Moorhead at Jay Cooke

& Co.'s banking office; handed him the letter. He read it in our presence.

(Attention of the witness called to Exhibit A, to the answer of DeGraff & Co.)

335 (A copy of said letter is hereunto annexed, marked Exhibit No. 4.)

Exhibit A is a copy of the letter I have spoken of. We did not have a very long interview. He, Moorhead, said he was not ready; (I was no stranger to Moorhead nor Jay Cooke & Co.,) that he would think of it, and whenever he was ready he would let us know, but he wanted the work done as cheap as he could, and would give us a fair chance. The next time I met Mr. Moorhead, I think, was out here with a company, Mr. Becker, Geo. L. Becker, Mr. Moorhead, and myself, and others, making the trip on the proposed route from St. Cloud to the Red River, and on our return we came over the road which we were grading then to Breckenridge, the main line of the First Division. He expressed himself highly pleased with such grading as we were doing, and said we should be fairly considered when he let the work. After that we got a dispatch, or letter, can't tell which, from the N. P. R. R. Co., to be in New York on a certain day, that they were going to let the work of the N. P. R. R. This dispatch, or letter, was a few days before we took the contract on the St. Vincent extension.

Prior to this dispatch, or letter, we had an interview at Minneapolis, in regard to the Brainerd Branch. They asked for bids there to build this road. I think they had invited them. There were a number of bids there, and the contract was awarded to Wallace & Co., and that bid was in the interest of DeGraff & Co. There was a meeting of the board of directors there at that time, both of the 1st Div. Co. and the N. P. R. R. Co. Moorhead and the board did not know Wallace & Co. They wanted to know who they were, as to their responsibility, &c., and Col. Crooks and myself were called in before the board, and I told them they were good men and responsible, and would endorse them; and there was some one asked me if the bid was in the interest of De Graff & Co. I told them that was the fact, and some one remarked we could well afford to indorse the bid. Nothing was said at that interview about reducing the bid. That was the end of that interview. I went to Duluth with papers which Mr. Crooks had drawn up; don't know whether it was that contract or not. I handed the papers, whatever they were, to Mr. Moorhead. The contract was not executed at that time, either at Minneapolis or Duluth. Mr. Moorhead took the papers which I delivered to him at Duluth with him, whatever they were.

The next interview was at New York, I think, at the time we went in response to a letter, or telegram, which I have stated. We went down there, and met Mr. Moorhead. The N. P. R. R. Co. board of directors were in session. Mr. Moorhead was there, and said he was ready

336 to let the work on the St. Vincent extension, if we could agree. This was at No. 120 Broadway, at the rooms of the N. P. R. R. Co. No one was present at an interview we had then but Mr. Moorhead, Col. Crooks, and myself. He wanted to know if were prepared to make a bid. We told him we were. We told him what De Graff & Co. would do the work for. He thought it was too high, and said he would like to have us change our bid. We had put in a bid at so much per mile for the whole line. He wanted us to change our bid. He wanted an itemized bid from St. Cloud to the crossing of the N. P. R. R., and a mile bid for the balance. We prepared the bids in that way, and handed them to Mr. Moorhead. He appeared to be perfectly satisfied with the

mile bid—made no objection. The other he objected to, thinking we had it too high for excavation and earth work. I told him that I considered it was worth our price fully, for the reason I had experience; had gone through the same kind of timber from Crow River to the prairie; that I did not care to have anything to do with it at a less price. I told Col. Crooks: "You and Mr. Moorhead go on and fix it and talk it up." They did. It was the only item that I recollect of Mr. Moorhead objecting to as too high in the itemized bid. Col. Crooks and Mr. Moorhead agreed upon the price. They got my views, and then they fixed it up, and I said: "Colonel, if you have good weather, you may get through with it." No part of the business, as far as I know, was done with any one except Mr. Moorhead.

I never said a word to any one else in regard to it, after I was told by Mr. Becker that Mr. Moorhead had the contract, except, perhaps, to ask Mr. Fargo, who was an acquaintance, to tell Mr. Moorhead to give De Graff & Co. the contract. I knew Gov. Smith, the president of the N. P. R. R. Co. I had nothing to say to Gov. Smith in regard to it whatever.

Col. Crooks did not, in my presence, nor so far as I know, have anything to do with any one but Moorhead in regard to the contract. When we went to New York we had no intimation that the work on the extension lines was to be let then. We did not hear that the work was proposed to be let then, until after our arrival in New York. Then I learned it from Mr. Moorhead, as I have stated. The purpose for which we went to New York related exclusively to the bidding for work on the N. P. R. R. The formal contracts were not executed then. Mr. Moorhead went off very hurriedly.

Question. State whether, on the visit of Mr. Moorhead to St. Paul in 1873, at any time or place, you said to him these words, or words to this effect: "I never supposed you were individually liable to us until I saw it in Becker's affidavit, which is the reason I give you for commencing this action."

337 Answer. Oh no, never. I always did say to Mr. Moorhead that we were pleased with the trade which they had made in getting Mr. Moorhead in place of Mr. Litchfield. I saw Mr. Moorhead on that occasion when he and the party took the train from St. Paul to Davenport. We shook hands, and I said to Mr. Moorhead I always had an attachment for him, and the secretary, or some one with him, said "Yes, you served it on him Saturday." Nothing else was said between us at that time, that I remember; there might have been. We were there only a few minutes before the train left. Nothing was said, other than I have stated, on that occasion in reference to Mr. Moorhead's liability to us for the building of the extension lines of the St. Paul and Pacific R. R. I did not have, and have not, any interest in the business of DeGraff & Co. other than to wish the boys well.

Cross-examination.

The firm of DeGraff & Son was composed of myself and my son Charles A. DeGraff & Son completed the work from Crow River to Darwin, on the main line, First Division Company, about the time DeGraff & Co. took the contract to build the road from Darwin to Breckenridge. De Graff & Son had completed the work on the main line, and DeGraff & Co. had about completed their work on the main (line) at the time of entering into the contract for the construction of the extension lines. The firm of DeGraff & Co. who built the main line from Darwin to Breckenridge was composed of C. A. DeGraff and Col. Crooks, and the

firm of DeGraff & Co. which built the extension lines was composed of the same parties and Nicholas DeGraff. When Col. Crooks and myself visited Mr. Moorhead at Philadelphia, when we carried the letter of Gen. Becker to him, was in the latter part of April, 1871. The firm of Wallace & Co., who bid for the work on the Brainerd Branch, was in fact DeGraff & Co. Since those contracts were taken for building the extension lines, I have been constantly engaged assisting in their construction, but I spent more time on the Winona & St. Peter R. R. than on the extensions; but consulted with them when they required.

338 *Testimony of M. M. Williams.*

M. M. Williams, a witness produced on the part of the defendants, DeGraff & Co., being duly sworn, deposes and says:

I am a book-keeper for DeGraff & Co. (Witness shown a package of papers.) They are the estimates of the engineer of the St. Paul and Pacific R. R. Co. of the work done by DeGraff & Co. on the extension lines. I have been book-keeper of DeGraff & Co. since the fall of 1871. My duties have been to keep the accounts and act as cashier; have had charge of the records and papers of their office. (Witness shown exhibit C No. 1.) That is the first estimate on the Brainerd Branch for excavation; that was made and delivered to DeGraff & Co. about 15th of Nov., 1871. It is for work done in October. That was made by Gen. Spaulding, division engineer of the St. Paul and Pacific R. R. Co., Brainerd Branch. He was the engineer in charge of that work. (Witness shown Exhibit C No. 2.) That is the second estimate on same work; that was also made by Gen. Spaulding. (Witness shown Exhibit C No. 3.) That is the first estimate on St. Vincent extension of St. Paul and Pacific R. R. That was made by Chas. A. F. Morris, chief engineer. (Witness shown Exhibit C No. 4.) That is the estimate for December, 1871, on the Brainerd Branch and St. Vincent extension, for work and material furnished. (Witness shown Exhibit C No. 5.) That is estimate for work done and material furnished on the Brainerd Branch and St. Vincent extension for January, 1872. (Witness shown Exhibit C No. 6.) That is estimate for work done and materials furnished for the month of February, 1872, on the Brainerd Branch and St. Vincent extension St. Paul and Pacific R. R., by DeGraff & Co., made out and delivered to them by C. A. F. Morris, chief engineer. (Witness shown Exhibit C No. 7.) That is estimate for work done and materials furnished by DeGraff & Co. for the month of March, 1872, on the same lines of road therein named. (Witness shown Exhibit C No. 8.) That is estimate for work done and material furnished for the month of April, 1872, made by C. A. F. Morris, chief engineer, and delivered to DeGraff & Co. (Witness shown Exhibit C No. 9.) That is a like estimate for the month of May, 1872. (Witness shown Exhibit C No. 10.) That is a like estimate for the month of June, 1872. (Witness shown Exhibit C No. 11.) That is a like estimate for the month of July, 1872. (Witness shown Exhibit C No. 12.) That is a like estimate for the month of August, 1872. (Witness shown Exhibit C No. 13.) That is a like estimate for the month of September, 1872. (Witness shown Exhibit C No. 14.) That is a final estimate made by the engineer after the work was suspended. These estimates were made and delivered by the chief engineer to DeGraff & Co. of the work done by them and materials furnished under their contract to build the Brainerd Branch and St. Vincent extension of the St. Paul and Pacific R. R.

Exhibit C from one to 14 are offered in evidence by the defendants DeGraff & Co.

(Copies of said estimates are hereunto annexed, marked Exhibit No. 25.)

339 Question. Please read off from your cash book, giving dates and amounts, the payments made to De Graff & Co. for the construction of the extension lines, including the St. Cloud bridge.

Answer.

Dec.	16,	1871,		$9,000 00
"	19,	"		54,180 00
Jan'y	4,	"		36,450 00
"	22,	"		11,568 60
February	20,	1872,		10,146 60
April	1,	"		14,368 50
"	19,	"		8,860 32
May	20,	"		8,555 79
"	20,	"	on extra contract acc't,	384 00
July	2,	"		6,434 64
"	24,	"		3,074 19
January	22,	"		49,651 76
February	15,	"		12,813 20
February	19,	"		77,407 34
March	16,	"		102,766 98
April	19,	"		88,600 06
May	16,	"		43,887 29
"	20,	"		11,015 51
June	17,	"		150,000 00
"	22,	"		10,000 00
July	2,	"		38,157 95
"	16,	"		100,000 00
"	17,	"		50,000 00
"	24,	"		5,000 00
"	27,	"		140,000 00
"	31,	"		9,134 13
Oct.	1,	"		100,000 00
"	15,	"		55,000 00
Dec.	17,	"		50,000 00

I commenced book-keeping for them in November, 1871. We have now at the office of De Graff & Co. the same books which were used at the commencement of the work, and I am still in their employ as book-keeper. The St. Paul & Pacific R. R. Co. on those books is debited with the labor performed and material furnished on this work, and that company is credited with the payments made. Their accounts
340 stood in the same name until July, 1873, and they stand in the same until the present time. I acted as cashier of De Graff & Co., but not exclusively so; but that was a part of my duties. One of the firm also performed part of the duties of cashier. On the cash book of De Graff & Co., these payments are credited sometimes to the St. Paul & Pacific R. R. and sometimes to the St. Paul & Pacific R. R. Co.—in six instances the St. Paul & Pacific R. R., and in all the rest the St. Paul & Pacific R. R. Co. There is no charge or credit in these books in the name of Wm. G. Moorhead.

341 *Testimony of William Crooks.*

WILLIAM CROOKS, a witness produced on the part of the defendants,

De Graff & Co., being first duly sworn, deposes and says: I am the Wm. Crooks who is a defendant in this suit. The firm of De Graff & Co., composed of Wm. Crooks, Charles A. De Graff and Nicholas De Graff, has existed since prior to October, 1871. There was a firm of De Graff & Co. prior to that, consisting of the same Chas. A. De Graff and Wm. Crooks, which firm was formed in February, 1869, for the purpose of constructing the railroad between Darwin and Breckenridge, of the main line of the First Division of the St. Paul and Pacific R. R., under a contract made between them and E. Darwin Litchfield, of London, England, the original contractor. The business of De Graff & Co., both firms, has been building railroads. I am a civil engineer by profession. Have had large experience in building railroads, both as engineer and contractor. Have followed it for over twenty years, and am familiar with the business of constructing railroads in all its details. I remember the date of entering into the contract with Litchfield for building the main line of the First Division of the St. Paul and Pacific R. R.; it was 18th of February, 1869. Mr. Litchfield, in making that contract, acted by an agent. Geo. L. Becker acted as his agent. At the time we entered into this contract, I understood the arrangement he had with the company for building the road. Though I had not then seen his contract, but have since. I can't state when I first saw this contract. It was after the work had been commenced.

342 I saw what purported to be a contract between Mr. Litchfield and the First Division Company. Mr. Becker informed me, before we entered into the contract, that Mr. Litchfield had the proceeds of the bonds, and had contracted to build the road, and our contract must be with him, Litchfield, and it was made with him. The present firm of DeGraff & Co. was formed for the purpose of building the extension lines, so called, of the St. Paul & Pacific R. R., consisting of the line from Watab to Brainerd, a distance of 61 miles, and the line from St. Cloud to St. Vincent, a distance of 316 miles, more or less, about that. In the spring of 1871, in April, we first learned that it was the intention of the company to build the extension lines. The firm of De Graff & Co. made an application to Geo. L. Becker, president of the First Division Company, with reference to building these lines. I was at his office, on the levee, in St. Paul, in the spring of 1871, April 21, or about that day. Col. Andrew DeGraff, Geo. L. Becker, and myself were present, and no one else. Col. Andrew DeGraff is the father of Charles A. DeGraff, and was then acting for him as a member of the firm of De Graff & Co. We had prepared a form of contract, providing for the construction of this work, making the railroad company and ourselves parties—the First Division of the St. Paul & Pacific R. R. Co. This form of contract showed the kind of work, by way of specifications, we proposed to do, stating the price thereof, and all other matters pertinent to such forms of contracts. We were informed by Mr. Becker that he would be very glad to give us the contract for the entire work, if he had the power, but that the company had made a contract, or had agreed to make a contract for the construction of these extension lines, with Mr. Wm. G. Moorhead, of Philadelphia; that he, Moorhead, held the same relation to the railroad company for the execution of these works as E.

343 Darwin Litchfield had towards the line to Breckenridge, and that we must see him, Mr. Moorhead, if we wished to make such a contract, and that inasmuch as we had decided to visit Philadelphia then for the purpose of conferring with Mr. Moorhead on this subject, he, Mr. Becker, would give us a letter to Mr. Moorhead, recommending us as railroad builders, and would forward the form of contract

which we had offered to him (Becker), suggesting certain changes and modifications, which changes and modifications consisted in changing the name of one of the parties to the contract as submitted, from the railroad company to Wm. G. Moorhead; and also regarding the matter of transportation of men, supplies, and materials, free of cost to the contractors, DeGraff & Co., over the lines of the First Division of the St. Paul and Pacific R. R. Co. Col. DeGraff remarked that he was glad to hear that Mr. Moorhead was to take the place of Mr. Litchfield; that he had known Moorhead, Jay Cooke, and Pitt Cooke, and the father of the Cookes, for a good many years, and that Moorhead was as good as wheat, or words to that effect. Mr. Becker gave us a letter. (Witness shown Exhibit A, annexed to the answer.)

(A copy of said document is hereunto annexed, marked Exhibit No. 4.)

Exhibit A is a true copy of that letter. We immediately on receipt of this letter proceeded to Philadelphia, taking the letter with us. I don't remember whether Mr. Becker forwarded the draft of contract by mail or by us.

But it went to Philadelphia. We saw Mr. Moorhead immediately on arriving at Philadelphia, and laid our business before him, and Mr. Moorhead stated that he was glad to see us, knew us to be good railroad men, and at the proper time would give us a chance to bid for the work. At that interview we handed to Mr. Moorhead the letter which had been furnished us as a letter of introduction from Mr. Becker. He took the letter, read it in our presence, and kept it in his possession. We then came away. We next saw Mr. Moorhead in regard to the contract for this work, when he came to Minnesota in the month of June, I
344 think 1871. He then said his business here was to examine the country through which these lines pass, and for consultation with Mr. Becker, at least that is what we understood. During that visit we saw Mr. Moorhead frequently, and talked with him in relation to the construction of the lines of road. Col. DeGraff and myself and others drove with him in a wagon from St. Cloud through the country where the line of road was projected, in order that Moorhead might see for himself the nature of the country through which the lines were to be built. He stated that he was not then ready to let the contract, but he was delighted with the country and would make a report which would make a market for the bonds. We had not in the mean time solicited any one else for the contract besides Mr. Moorhead.

In the early part of August, 1871, there was a meeting of the directors of the First Division of the St. Paul and Pacific R. R. Co. held at Minneapolis, and there were present, to the best of my recollection, Judge Rice, Geo. L. Becker, Gov. Smith, and Mr. Billings and Mr. Wm. G. Moorhead. Previous to this meeting contractors had been asked to make bids for the construction of the line of railway between Sauk Rapids and Brainerd, known as the Brainerd Branch. DeGraff & Co. put in a bid in their own name for a definite sum per mile, which was to include all grubbing and clearing, earth-work, bridges, culverts, road-crossings, cattle guards, furnish all ties, lay track, and surface the road. Another bid in the interest of DeGraff & Co., put in subsequent to the first bid, made direct by us, was in the name of Wallace & Co., which bid covered all the items before mentioned in the bid of DeGraff & Co., and was for the sum certain of $3,750 for each and every mile of said Brainerd Branch. I will state that Mr. W. B. Ogden was also present at that meeting. These bids were in writing, and were delivered to Geo.

L. Becker some time previous to the meeting of this board of
345 directors. Bids were requested. Col. Andrew DeGraff and myself were at Minneapolis at the time of this meeting, and were requested, being at the hotel by Mr. Samuel Wilkeson, to go to the room occupied by the directors. We met the gentleman aforesaid. Mr. Becker, inasmuch as Wallace & Co., whose bid was before them, together with other bids referred in their bid to DeGraff & Co. as parties who would become the surety of Wallace & Co. for the faithful performance of the work should the contract of the Brainerd Branch be awarded to said Wallace & Co., asked us if we knew Wallace & Co. Col. DeGraff stated that Col. Crooks could answer that question, and I replied that we knew them very well, could not know them better; that Mr. Wallace had been long employed by us, and that we knew him to be a responsible, pushing, and capable man, and that the Co. consisted of the firm of DeGraff & Co. Mr. Becker remarked that he thanked us for being so perfectly frank about the matter. Some conversation took place further between Judge Rice, Mr. Ogden, Gov. Smith, Mr. Becker, Col. DeGraff, and myself, as to the proper way of building prairie roads. Mr. Moorhead also took part in this conversation about the method of building prairie road. Mr. Ogden remarked that he had never heard of a railroad being built at such a low price as $3,750 per mile, and he thought it was a shame to ask men to do it for any such price. This conversation was an informal one, and we left for St. Paul. No resolutions were passed at that meeting in our presence. (The attention of witness is called to paragraph 14 of complainant's bill.) I knew nothing about that resolution. I was informed that the bid of Wallace & Co. had been accepted; can't state who informed me. We understood from the parties that the purpose was to build the road at once with great expedition. At my suggestion, Col. DeGraff followed Mr. Moorhead and
some other members of the board of directors to Duluth, those
346 gentlemen being on their way east by way of the lakes, and Col. DeGraff carried with him a form of contract and specifications, roughly drawn, but intended to cover just such work as was bid for by Wallace & Co. for the construction of the Brainerd Branch, and Col. De Graff informed me that he had seen Moorhead and left the papers with him. Mr. Moorhead went home without the contract being executed. In the latter part of September, 1871, I next saw Mr. Moorhead in New York, at the office of the Northern Pacific R. R. Co. I went to New York at the invitation of Gov. Smith, president of the Northern Pacific R. R. Co. I was accompanied by Col. Andrew DeGraff.

The firm of DeGraff & Co. were invited to be present in New York. We were invited to go to New York to bid on the Dakota Division of the Northern Pacific R. R., to meet other contractors and compete with them there. The contract for building that division of that road was to be then and there let. We had no other business to New York than that. We did not go with the expectation of doing anything with reference to the building of the extension lines of the St. Paul and Pacific R. R. On the morning named in the invitation of Gov. Smith, Col. De Graff and myself visited the office of Gov. Smith, at 120 Broadway, New York. The governor was not in. I think he did not arrive until the next morning, when I saw him, and stated that we were in New York on his invitation, and ready for business. I asked him, after some preliminary conversation touching the Dakota Division, whether the profiles of that division were ready, together with the estimated quantities of the work and material to be furnished. He stated that they had a large force of engineers at work in their offices, and that if I

would come the next morning at ten o'clock, he hoped to have them ready. I called at the time named, and he had a portion of the
347 profiles, which he handed me. Col. DeGraff and myself examined them very carefully, and told the governor that after seeing the balance of the profiles, that we would make him a bid on the ground floor, by which we meant at a price consistent with a faithful and thorough performance of the work. At this time, Mr. Moorhead asked us for bids for the construction of the line of railroad from St. Cloud to St. Vincent, and also for the construction of a bridge across the Mississippi River at St. Cloud. This conversation was between Mr. Moorhead, Col. DeGraff, and myself, in which conversation we explained to Mr. Moorhead that if the railroad—I mean the extension lines—were to be built within the life of the land grant, which would expire in March, 1873, it would be necessary that the contracts be made without any further delay, in order to enable the contractors to whom he might award the work the benefit of the fall and winter then impending, to make and deliver all the ties, amounting to over 1,100,000, and all the bridges and piling, clear and grub, forty miles west of St. Cloud, and do during the winter of 1871 and 1872 as much work as possible in the woods, where work could be properly done during the winter season. He admitted at once the importance of immediate action. In making our bids to him, we prepared bids by the mile, dividing the line into two divisions, one from St. Cloud to the supposed crossing of the Northern Pacific R. R., near the Red River of the North, and the other division extending from this crossing to St. Vincent, on the international boundary, the class of work upon the first division named being very much heavier than upon the second division. Mr. Moorhead took the bids. A day or two afterwards I was in the office of Mr. A. H. Barney, the treasurer of the Northern Pacific R. R. Co., at that time, which office adjoins the office of the directors of the Northern Pacific R. R. Co. Previous to this, however, and on that same day, Mr. Moorhead stated that they wanted bids on the
348 first division before mentioned, not by the mile, but by the yard; in other words, a classified bid for earth-work, bridges, materials, &c., and asked how long it would take to make such a bid. I answered him that it would take a very short time, because the material information from which I made the mile bid would constitute the only possible basis for a classified bid as he desired. Mr. Moorhead said that their offices were all occupied, and that we had better go down—meaning Col. De Graff and myself—to the office of Jay Cooke & Co., on Wall street; that he would give us a note to Mr. Pitt Cooke, who would place a room at our command. Col. DeGraff and myself immediately proceeded to the office of Jay Cooke & Co., and in a room provided by Mr. Pitt Cooke we prepared a classified bid, as requested, and immediately returned to the office of the Northern Pacific R. R. Co., where Mr. Moorhead was. I immediately sent for him and handed him the bid. Then we, Col. De Graff and myself, went to the office of Mr. Barney, as before stated. Shortly Mr. Moorhead came into that office, said he had looked over the bid for the first division, before mentioned, which went from St. Cloud to the crossing of the Northern Pacific R. R., and said that he could have it done cheaper by responsible men. We had bid for earth-work 39 cents per cubic yard; he said we must do it lower if we wanted the work. Col. DeGraff answered that we did not want the work at a cent less, because it could not be done; that he had graded the road through the big woods west of Minneapolis—I mean the main line of the First Division of the St. Paul and Pacific R. R.—that he had got 38 cents for

that work and had lost money on it, and that the country was as bad on one line as on the other. Mr. Moorhead said he was anxious we should have the work, told some about his experience on public works, and finally suggested 34 cents as the correct price. This we refused.
349 He then offered 35 cents. This we refused. Col. DeGraff then said that he had better let that work to some one else if they could do it for any such prices. Moorhead said that he was satisfied with our bid for the second division, which was for $4,660 per mile, which was to comprise the entire work except furnish the iron, and that we could afford to take a lower price of the first division. DeGraff said, speaking to Moorhead, "Arrange it with Col. Crooks; whatever he does I will be satisfied with," or something to that effect. I then offered to do the earth-work for 36 cents per cubic yard. He then wanted some modification in regard to the price of timber, which, after some conversation, I reduced materially to meet his views. This conversation was all held in the afternoon. Mr. Moorhead then went into the board-room of the Northern Pacific R. R Co. and we returned to the ante-room, where we remained until about 4 o'clock, when Mr. Moorhead came out of the board-room and stated: "Gentlemen, you have got the work." That was his language. I asked him how much of the work. He answered, "All of it." He had some conversation with Col. DeGraff for a few moments, and some other gentlemen present. I asked him whether I should not prepare the contracts in accordance with our understanding. He said no, that he was on the eve of his departure for Philadelphia—in fact, that he had no time to lose in catching the train; that he had all the papers; that he would prepare them himself, in accordance with our understanding, and would forward them to St. Paul. We had no conversation with Gov. Smith upon the subject of contracts for these extension lines. The negotiations for these contracts were carried on by us exclusively with Mr. Moorhead. The contracts were drawn up as to the dates.

The Brainerd Branch contract was the 2d day of October, 1871; two contracts, covering the line from St. Cloud to St. Vincent, are of
350 the date of the 5th October, 1871. The contracts were drawn up by Mr. Moorhead, in Philadelphia; sent to Mr. Becker. They were executed by Mr. Moorhead when they were sent. They were in triplicate, according to the best of my recollection, and all executed by Wm. G. Moorhead when he came here. They were then executed by DeGraff & Co.—by Wm. Crooks, Nicholas DeGraff, and Charles A. DeGraff, and duly witnessed. We commenced work. I will explain. I telegraphed from New York to put all the force possible upon the Brainerd Branch immediately, and upon my return from New York commenced the prosecution of the work upon the line west of St. Cloud, after the line was given us by the engineers. I don't remember the dates; it was as soon as we could get to work. We went to work by the direction of Mr. Moorhead or by the engineer in charge. Chas. A. F. Morris was the engineer in charge. He purported to be acting for Mr. Moorhead, as his engineer in charge of the work. (Witness' attention is called to Exhibit G, to complainant's bill.

A copy of said letter is hereunto annexed, Exhibit No. 18.)

I received that letter at or about the time it was written. I can't state whether we replied to it, but think we did to the telegram. I know we did to the telegram referred to in the letter. I think we did not wait on Gen. Becker as required to by that letter; we went right along with that work on the Brainerd Branch. I think we had not at that time commenced work on the St. Vincent line. We put on all the men we

could work, because we knew that in order to complete those extension lines within the life of the land grants there was not an hour to lose. The only trouble we had was to have the engineers locate line fast enough for us, and we were thereby delayed very considerably. We were acting under the whip all the time, but we did not need it, as we were waiting for the location of the line all the time. By being under the whip I mean we were being pushed by the engineers and the authorities
351 here. We also immediately made arrangements to make all the ties, prepare all the bridges, all of which work was to be done, including the delivery of the material, before the opening of the spring of 1872, and which amounts of materials covered 1,100,000 ties, bridges, and all the piles necessary upon the entire road. This work could not have been done in time to insure the construction of the road except during the winter of 1871–'72. During the season of 1872 the engineers and other parties in interest continued to urge the work. Estimates were made monthly by Mr. Morris, the engineer, of the labor done and materials furnished. The estimates were made and paid up to June, 1872. Upon reflection, I think up to July 1st. That is, the estimates of the June work were paid. Up to and including the time when we made these contracts with Mr. Moorhead, neither Mr. Moorhead or anyone else ever intimated that Mr. Moorhead sustained any other relation to the work than that of a contractor. We understood that Mr. Moorhead sustained the same relation to the work that Mr. Litchfield had previously on the main line, First Division Company, he, Mr. Moorhead, receiving the avails of the bonds and contracting with the company to do the work, and contracting with us to perform it. In preparing the form of contract which I testified about yesterday, and which I sent by Mr. DeGraff to Duluth, I don't recollect whether I put in the names of the contracting parties or not. In October, 1872, in Philadelphia, was the first time I ever had an intimation from Mr. Moorhead that he did not sustain the relation of a contractor to the company. He said he could not pay any more until the Dutch paid; that he was already in advance of the company, and could not advance further until got returns from the Dutch. I went to Philadelphia at that time, being dissatisfied with the manner in which the business was done. I had received contradictory dispatches while on the work at Brainerd in regard to pushing the work, some
352 urging me to drive the work, and others to go slow. In this quandary I came to St. Paul and immediately saw Mr. Becker, who had charge of the work as the agent of Mr. Moorhead. Mr. Becker stated, in reply to my stating that I intended to proceed at once to Philadelphia to see Mr. Moorhead in person, that there was no necessity for my going, that he had absolute assurances that not only would the past estimates be immediately paid, but that all the funds necessary would be supplied for the completion of the entire work during that season, and that that night he expected most certainly to receive telegrams to that effect, as all the business was arranged. I explained to him that we were so largely in advance that we must have some certainty or we could not go any further, and at his suggestion delayed my departure until the next morning, when I agreed to meet him at his office at 8 o'clock, he having received no dispatches during the night. I started to Philadelphia. I went to Philadelphia and saw Mr. Moorhead. I procured funds from him then; he told me he would issue orders to his engineer to stop all work. He did so issue orders to his engineer, and the engineer ordered the work stopped, and it was stopped, in accordance with the provisions of the contract. I understood at the time it was only a temporary suspension of the work. I expected then

that the work would be resumed soon. I had no idea that it would be permanently suspended. My recollection is that I did not see Mr. Moorhead from the time I saw him in New York, when we arranged the terms of the contract, until I saw him in Philadelphia. Up to the time of the commencement of this suit, I never had any conversation with Mr. Moorhead in which he intimated that the contract which we had entered into was a contract with the company and not with him, Moorhead.

May 29, 1875, the examination of Wm. Crooks being resumed,
353 he says: On the occasion of my visit to see Mr. Moorhead at Philadelphia, in October, 1872, a telegram was sent to Holland in my name. In conversation with Mr. Moorhead, Mr. Moorhead said he could not furnish any more money, because the Dutch did not send it to him as they had agreed. I asked him if he had requested them by cable to do so. He said he had repeatedly, but could get no satisfaction from them. I suggested to him that a cable be sent them, and asked him if the Dutch were aware of the desperate condition of things in Minnesota; that the property of the company was in danger because of the non-payment of the estimates to enable us to meet the demands of the laborers, and that unless the estimates were paid we should stop the work at once, and the land grant would be forfeited. He said he had repeatedly cabled them, but got no satisfaction; that they had acted in bad faith with him; that when he had still some $3,000,000 of the bonds of the Frst Division Co. in his own hands, and could have sold them readily in Philadelphia, that they, the Dutch bankers, cabled to him that when he sent the $3,000,000 remaining bonds that all the funds necessary to complete the extension lines would be placed at his disposal; that he sent the bonds forward reluctantly, and from that time he never received a dollar from them, the Dutch. He said, however, that it would be well to send a cable, signed by myself. The cable was drawn by Mr. Moorhead and myself, signed by me, and forwarded. The purport of the cable was that unless funds were immediately raised to pay estimates that the work would stop. There was no answer received to this cable by me. I saw in his office at that time correspondence and cables between himself and the Holland bankers. I don't remember whether, after the suspension of the work before the commencement of the suit against Mr. Moorhead, the firm of DeGraff & Co. made any personal demand of Mr. Moorhead for payment, but we did go to Mr.
Becker frequently and stated our distresses and the necessity
354 of our being paid, to him. After the work was suspended, in October, 1872, Mr. Moorhead made further payments to us. We were paid about $50,000 from moneys derived from the sale of iron. It was never understood between us and Mr. Moorhead that we should only look to the sale of bonds for our pay. There never was any understanding between us that our payments should be in any manner conditioned upon the sale of bonds. What he did say was about this, inasmuch as we had been speaking to him about delays on the Breckenridge line, of payments by Mr. Litchfield, the contractor, which very much inconvenienced us, he stated that it was not his intention to have the work progress any faster than he had means to pay for it with. The company of DeGraff & Co. kept their account for the construction of these extension lines in our books with the St. Paul and Pacific Railroad, or the St. Paul and Pacific Railroad Company, I cannot tell which. The firm of DeGraff & Co., in the construction of the main line of the First Division Company, under the Litchfield contract, kept their accounts on the books in the same way we kept these. We kept our ac-

counts this way because in our office Chas. A. DeGraff, of our firm, had contracts with other railroad companies, to wit, the Winona and St. Peter R. R. Co. and the Milwaukee and Fond du Lac R. R. Co., and his books were kept there in the office; and by keeping the accounts in the names of the roads it prevented any confusion. I have seen the estimates C, Nos. 1 to 14, inclusive. Those estimates contain a correct statement of work done and materials furnished by DeGraff & Co., under their contract with Wm. G. Moorhead. I did not make the estimates, but I have no doubt of their correctness, as far as they go; but they do not include all the work done and materials furnished by DeGraff & Co.

355 The building of the Brainerd Branch was not completed by June 1, 1872, for the reason I wanted to meet Mr. Moorhead's views in regard to it as near as I could; and he mentioned to me at Minneapolis in the first place, that he was not particular when we commenced it, and afterward in New York, he said he did not care how we pushed that road, but to push the lines north. We went on and pushed those lines north. I telegraphed from New York on the day Mr. Moorhead informed me that the contract was awarded us, to put all the force possible on the Brainerd Branch, and we had it graded in the fall of 1871, in about ten weeks, the entire line from Sauk Rapids, with the exception of four or five miles, which might also have been graded had the engineers located the lines, which they did not do. That four or five miles is not graded yet. Those four or five miles were not graded, because the work was stopped before it was reached. We got out the ties for the whole of the Brainerd Branch in the winter of 1871 and 1872, and many of them were distributed. The iron was not furnished until late in September, 1872, for this branch, and we had commenced laying it when the work was stopped. If the iron had been furnished for the Brainerd Branch in season, the road would have been completed by June 1st, 1872. Neither Gen. Becker nor Mr. Moorhead ever found any fault with the rate at which we proceeded with the work on the Brainerd Branch, but, on the contrary, it met their approbation, as far as I know. I never heard any fault found by Mr. Moorhead that all of the work did not progress sufficiently rapid; they only regretted that they had no money to pay for it. I know Richard W. Dorphley, of Philadelphia, or rather, I know the man by the name of Dorphley, who is a bookkeeper, and was sent out, as I understood, by Mr. Moorhead to examine the accounts of the First Division of the St. Paul and Pacific R. R. Co. Did not know what his first name was. I never made any statement to him, or in his presence, or to any one else, that Mr. Moorhead, in the construction of these extension lines, was acting only as construction agent, and was not responsible personally upon the contract. My acquaintance with him was very slight.

356 JUNE 2, 1875.

Wm. Crooks being recalled further testified and said:

The firm of DeGraff & Co. have paid duties on iron for Mr. Moorhead. We paid on the 14th day of May, 1875, in the neighborhood of $6,000 gold on a portion of 1,000 tons of iron at Duluth sold to us by Mr. Moorhead. Mr. Moorhead gave DeGraff & Co., in part payment of the sums due them, 2,700 tons of iron. This iron had been imported from England. It was understood between Mr. Moorhead and us that we were to have that iron clear of all duties; the business was transacted mainly through Mr. Russell, at Duluth, who was Mr. Moorhead's agent in respect to this iron. The duties on this iron were unpaid upon 1,000 tons, and the duties on this 1,000 tons are what we are called upon to pay now. The

exact amount of duties on this iron is $13,860 gold, on which we have paid about $6,000, and the balance will have to be paid before August, as it will then have been three years in bond. The 1,000 tons of iron was in the hands of the U. S. Government when we bought it, and has been ever since, except that portion on which we paid duties, and this portion on which we paid duties was then turned over to us.

357 Those lots were entered at the custom-house at Duluth three years ago this spring & summer.

The three years allowed by law for the payments of duties will expire on the last of this iron in August, I think.

(Paper shown witness, and he is asked what it is. It is a telegram from Wm. G. Moorhead to DeGraff & Co., received Dec. 14, 1871. Paper offered in evidence, and it is marked Exhibit No. 19 hereunto annexed.)

Question. State the condition of the several lines at the time of the suspension of work in Oct., 1872.

Answer. On the Brainerd Branch there were 4½ miles ironed, 51 miles in addition were graded and not ironed, and 5½ miles upon which no work had been done. On the First Division of the St. Vincent Extension 417 miles were ironed, from Glynden to St. Cloud, and I think about 75 miles graded but not ironed, and 40 miles upon which no work had been done. Upon this division there remains, in order to complete the grading, 600,000 cubic yards. Upon the Second Division of the St. Vincent Extension there are 92 miles ironed, 50 graded but not ironed,

358 and about 13 miles upon which no work has been done. It would require to complete the grading upon this division about 75,000 cubic yards. No bridges for the several divisions are framed and delivered; pile culverts mostly driven; all piles of those not driven were furnished and delivered, and ties sufficient to lay all the uncompleted portions were furnished and delivered.

Wm. S. Lane, of Philadelphia, is an attorney-at-law. I requested Mr. Lane to draw up the bill of sale for the iron which Mr. Moorhead turned over to us in part payment. I think that was last of September or first of October, 1872, probably about the first of October. The firm of DeGraff & Co. have a suit at law against the First Division of the St. Paul & Pacific R. R. Co. for the same matter, substantially, as that embraced in this suit. I can't tell when that suit was commenced; that was commenced in the district court, Ramsey County, Minnesota. In that suit the plaintiff sued sundry parties garnisheed as having property of the said First Division Co. in their possession, or under

359 their control, or being indebted to it. The firm of DeGraff & Co. filed a claim in the office of the auditor of this State under the provisions of the legislative act of Feb. 21, 1874, embracing the same claim for compensation for the construction of the extension lines as is embraced in this suit at law, and covering the same work under the contracts Exhibit B, C, and D.

They were filed within the time required by that special act. That legislation was procured by the active exertions of the members of our firm, or some of them.

Attention of witness again called to interviews between himself and Wm. G. Moorhead in the latter part of September, 1872, in Philadelphia.

Question. State, if you please, what was said by Mr. Moorhead on that occasion in reference to his relations to the First Division Co. relative to the construction of the extension lines of the St. Paul and Pacific R. R.

(Objected to because the matter was gone into by the witness on his direct examination, and was not referred to in his cross-examination.)

Answer. I would answer that question by saying that during
360 the several days I was staying in Philadelphia at that time we had several interviews each day, my business there being to secure from Mr. Moorhead a portion if not all the money due us, DeGraff & Co., upon the several unpaid estimates. The result of the several conversations left the impression upon my mind—which impressions were formed from his statements—that he was not the party who was liable under this contract to us.

Question. You had consulted no counsel in regard to the force and effect of this contract with Mr. Moorhead until shortly before the commencement of this suit, had you?

Answer. No, sir.

Testimony of Benjamin S. Russell.

JUNE 16, 1875.

BENJAMIN S. RUSSELL, a witness produced on the part of the plaintiff, being first duly sworn, says: I am 50 years old; live at Duluth; have resided there 4 years and over. Know Col. Crooks, of the firm of De Graff & Co. I am the B. S. Russell by whom the original letter, a copy of which purports to be set out on page XVI of plaintiff's printed testimony, was written.

Question. State whether, during the negotiations in said letter referred to, you had any conversation with Col. Crooks relative to the indebtedness said iron was intended in part to satisfy, the party indebted, and how such indebtedness originated; if so, state all that was said relative thereto.

(Objected to by defendants, De Graff & Co., as immaterial.)

361 Answer. I did have such a conversation. I told Col. Crooks that I had authority to transfer to him the iron mentioned in that communication, lying at Glyndon and Duluth, and to take his receipt therefor on the amount due him from the St. Paul and Pacific R. R. Co., First Division. Col. Crooks agreed to the terms, $75 per ton; to resell to the company within five months at the same price, with 7 per cent. interest. He stated that the company owed them a large amount. That he had been endeavoring to get some money from them through Mr. Moorhead, and that this would give them the means of obtaining it. He spoke of the amount the road owed them. My recollection is that it was near $750,000. I replied that this would reduce it to a half million. That conversation took place Dec. 27, 1872, at Duluth, at the Clark House. Mr. Eldredge had the papers drawn up, and they were being signed. The iron which I had charge of was delivered over to them. There was no claim made by Mr. Crooks then, or at any time, that Mr. Moorhead was individually liable to his firm.

Cross-examination:

I was in possession of the iron mentioned in the papers then. I had it in my possession as shipping agent of the St. Paul and Pacific R. R. Co. Mr. Wm. G. Moorhead employed me as shipping agent. Mr. Moorehead also paid me for my services as shipping agent. No one beside Mr. Moorhead employed me as shipping agent. The correspondence was all with Mr. Moorhead as construction agent of the St. Paul and Pacific R. R. Co. The iron was consigned to me in my own name, at Duluth. My impression is that the bills of lading were to Wm. G. Moorhead, construction agent, at Duluth. They were either to him or to me. All the iron received had been shipped in the same way. The

interview occurred between Col. Crooks and myself; took place early in the morning, Dec. 27, 1872. The arrangement for the transfer of the iron, and the terms upon which it was to be transferred, were all previously arranged by Mr. Moorhead. I had nothing to do in regard to the transfer but to execute the formal papers. Col. Crooks was in a hurry to take the train on the morning the papers were executed. The papers had, I think, been drawn up previously. Yes, they were. That interview lasted that morning, I think, a couple of hours; it lasted no longer than was necessary to transact the business. I had no authority to act for Mr. Moorhead in regard to the payment of the balance, Exhibits Nos. XVIII and XIX, in complainant's testimony. My impression is, Mr. Eldredge drew the papers, and while he was drawing them up, I and Col. Crooks were chatting. I had no occasion to inquire at that time whether it was the indebtedness of Mr. Moorhead or the St. Paul and Pacific R. R. Co. I knew it was the St. Paul and Pacific R. R. iron I had been receiving. The subject of who DeGraff & Co. had entered into a contract with for building the road was not discussed

B. S. RUSSELL.

362 WILLIAM G. MOORHEAD examined by SAMUEL DICKSON, e'qr. for plaintiff:

Question. Please state your name, age, residence and occupation.

Answer. My name is William G. Moorhead; age, over sixty years, and residence 39th and Chestnut streets, Philadelphia. I was a member of the firm of Jay Cooke & Co.

Q. Have you any pecuniary interests in the result of this suit?

A. Only so far as it offsets the interests of the creditors of Jay Cooke & Co. There is no probability of any surplus of the estate coming to me under any circumstances.

Q. When did you become interested in the Northern Pacific Railroad Company?

A. When the first arrangement was made by our firm I was in Europe. I returned in 1869, and found that I had been elected a member of the board. The Northern Pacific acquired a controlling interest in the stock of the First Division St. Paul & Pacific and the St. Paul & Pacific in 1870.

Q. Were you a director of the First Division St. Paul and Pacific?

A. I was.

Q. Who represented the agents who undertook the sale of the bonds at the time?

363 A. Mr. Willmar was agent of the financial banking concern who sold the bonds—Lippman, Rosenthal & Co., of Amsterdam. He accompanied Mr. Litchfield to New York, and on arrival at the Fifth Avenue Hotel requested me to see them in New York. I had met these gentlemen in London and had been introduced to Mr. Willmar there. Mr. Litchfield stated to me in New York that their object in coming to the United States was to arrange for the completion of the St. Paul & Pacific First Division, and that he would be glad to dispose of his interest in the two lines on reasonable and fair terms to the Northern Pacific Railroad Company. I reported this interview to the president of that company, Governor Smith, who desired me to treat with Mr. Litchfield and ascertain the best possible on which he would dispose of his entire interest. The result was that all his stock and interest was purchased by the Northern Pacific. Mr. Willmar accompanied Mr. Litchfield to the office of the Northern Pacific and assured the president that if proper arrangements were made he or his principals could and

364 would sell the bonds upon terms similar to those on which they had disposed of the bonds of the two roads for years previously. He said that the Dutch public were very peculiar, and that it would not do to cross a t or dot an i in the arrangement for the negotiation that would make it differ from the old contracts, as any change would interfere with successful negotiation of the bonds.

(Mr. Clough states that he has no objection to this evidence being given.) Their custom, he said, had been to have a contract with some one for the construction of the lines—an informal contract he stated, and said I prefer you, as I met with you in London and know you better than any of these other gentlemen and you have had experience with public works. This he said to me. He further said there will be no personal responsibility, as it is merely formal, to cover the points named above. He then, if my recollection serves me right, drew a very short informal paper, which he said would answer this purpose. I have no copy of this paper; if any such was drawn, and if it is in exis-

365 tence, I think it must be in the possession of Gen. Becker. In May, 1871, General Becker drew an agreement of which a copy is annexed, marked Exhibit 3, which contract was signed.

General Becker informed me that the contract was informal (objected to on ground of incompetency), and that it was not such a contract as would be drawn by a railroad letting a contract of magnitude to a contractor. (Objected to).

Q. When was this statement made to you by General Becker?

A. I think at the time of signing the paper, I distinctly stated then that I had no interest in the contract, simply signed it to facilitate the letting of the work to the contractors, and that I assumed no responsibility.

Q. Was the contract itself inconsistent with the terms of the arrangements already entered into between the parties?

(Objected to as incompetent & irrelevant.)

A. It was; because previous to the execution of this contract, $1,500,000, the proceeds of over $2,000,000 of bonds had been appropriated to construct the Breckenridge Branch, and subsequently

366 drawn for by General Becker, trustee and president, and myself, as trustee and construction agent, whereas by its terms the whole $15,000,000 were to go to the contractor. This was provided by a memorandum of November 22d, 1870. Most of the money was drawn subsequent to the date of this contract by written order of General Becker, trustee and president; also the interest upon the bonds previously sold by General Becker through these same parties, Mess. Lippman, Rosenthal & Co., to the amount of $1,232,000, was paid by order of General Becker and trustees out of these $15,000,000 spoken of in the contract. These bonds were issued years before and were of the First Division and Saint Paul and Pacific. No one of these bonds did I ever see or have anything to do with.

Q. What was your position at this time in the two companies?

A. I was a director in both roads, the Northern Pacific and the First Division, and acting particularly also for the financial agents, Mess. Lippman, Rosenthal & Co. (objected to by Mr. Clough), and the object of all parties, as I understood it, was to facilitate the construc-

367 tion of the St. Paul and Pacific Railroad, the time being limited to one year, in consequence of a forfeiture of land grant in case it was not finished.

Q. Please state whether you had any interest, except as a director, in the building of this road.

(Objected to as immaterial.)

A. Not a dollar; was not even to receive a salary, but stipulated with the companies for a first rate secretary to attend to the details of the business. I was to supervise the matter for the benefit of all concerned.

Q. Please state whether it was your understanding or the understanding of the officers of the First Division or of the Northern Pacific that you were to build the road and receive the proceeds of the bonds?

(Objected to as immaterial & incompetent.)

A. It was not by anybody.

Q. Please state what your duties were under the arrangement with Mr. Willmar and the companies.

(Objected to as incompetent & immaterial.)

A. My duties were: First, to place the work under contract; secondly, to arrange for the receipt and forwarding of the iron which
3 was purchased in London by Willmar and assigned to me as agent; attend to payment of duties, transportation, &c. In short, to place the iron on the road; to provide all the fastenings, splices, bolts, &c., connected with the road, and see that they were made out and forwarded; draw bills of exchange on Wilmar for payment of estimates which were paid out by Becker; and generally to supervise the whole matter of the construction or of the arrangement for so doing.

Q. Had you any facilities for drawing on London?

A. Formerly Becker drew from V. S. Paul, which cost two or three commissions; all this I saved by making direct bills through Jay Cooke & Co.

Q. Did you yourself ever undertake to act as contractor in the building of the road?

(Objected to as incompetent & immaterial.)

A. I did not.

Q. Did you ever render estimates to the company and receive payment as contractor?

(Objected to as incompetent & immaterial.)

A. Never.

Q. Did you ever solicit, by advertisement or otherwise, proposals for the construction of the work in your own name?

A. No, sir.

369 Q. How were the proposals solicited?

A. Through the president of the company.

Q. In what name?

A. They were advertised by Mr. Becker in the papers at St. Paul, and were received at the office of the company. I did not see the advertisement myself.

Q. When were the contracts first accepted for the building of the road, where, and by whom?

A. There were three distinct contracts. The proposals were first accepted at Minneapolis at a meeting of the board of directors of the St. Paul & Pacific First Division. This was the meeting of which a copy of the minutes is Exhibit No. 5. The persons proposing were called before the board. The bid was in the name of Wallace & Co., which Colonel De Graff informed me was his bid. He appeared before the board and stated that that bid was his.

Q. Who were present at that meeting?

A. Governor Smith, a majority of the board, and one of the board; (objected to as incompetent and immaterial) in conversation with De Graff induced him to reduce his price from the written prop-

370 osition, thus saving to the company a large amount of money. I did not interpose in any way. Governor Smith made the negotiation and the board ratified it by resolution. The agreement was made there and then as to price for the Brainerd line, as it is called. As there were no funds on hand for that purpose from the sale o fbonds the work was not commenced for several months, and I think not until after the completion of the Breckenridge line.

Q. When was that agreement reduced to writing, and by whom?

A. It was reduced to writing by Col. Crooks, of the firm of De Graff & Co., and sent to me by mail. It is in his handwriting. From this the contracts that were formally executed were copied. This is the original draft. (Exhibit No. 22 is a copy of this paper.)

Q. By whom were the formal agreements written?

A. By the secretary given me by the companies, George E. Bent. This paper (Exhibit 22) is the formal contract for the Brainerd Branch.

Q. When did the negotiations take place, and where was the contracts made for the building of the other branches of the road?

A. In New York, at the time of the holding of a meeting of the
371 Northern Pacific Railroad Company. Col. De Graff and Col. Crooks were there, and made the agreement with Gov. Smith, president of the Northern Pacific and director of the First Division of the St. Paul & Pacific. It was at the same time that the Northern Pacific was letting a portion of its road. It was after the Minneapolis meeting. It was Col. Andrew De Graff who was in New York. The agreement was then made, and subsequently the contracts were made. No proposal was ever addressed to me by any contractor, or any one proposing to take a contract on the line, as far as I recollect. These are the formal contracts, made in pursuance of the agreement made in New York (papers marked Exhibits Nos. 23 and 24).

Q. Please state whether authority was given to you by the board of the St. Paul and Pacific First Division to execute these contracts.

(Objected to as immaterial & incompetent.)

A. I considered myself the agent of the company, and was acting in concert with a majority of the directors, as far as the minutes are concerned. I know nothing beyond the minutes of the Minneapolis
372 meeting. I never saw the minutes of the company's meetings.

Q. Did you consult counsel as to the execution of the agreements?

A. No, sir; nor in connection with any other transaction of the company. I never had a lawyer.

Q. Did you intend to bind yourself individually when you signed the agreements (Exhibits 22, 23, 24)?

A. Never thought of such a thing as being in any way liable.

Q. Did you write to De Graff & Co. on the 20th of October, 1871, the letter of which a copy is annexed as Exhibit 29?

A. I did. A pressed copy was taken in my letter-book, and this correctly copied from that duplicate original (copy marked Exhibit No. 29.)

NOTE.—De Graff & Co. are required to produce on the hearing the original letter, of which this is a copy.

Q. Did you address the letter, of which a copy is annexed as Exhibit 7, to Gen. Becker on that date?

A. Yes, sir.

Q. Is this a correct copy from your letter-book of that letter?

A. Yes, sir.

(Copy marked Exhibit No. 7.)

Q. Is this the reply which you received?
373 A. Yes, sir.
(Paper marked Exhibit No. 8.)
Q. Did you address a letter, of which this is a copy from your letter-book, to L. Wilmar under date of October 23d, 1871?
A. Yes, sir.
(Copy produced & marked Exhibit No. 25.)
(All the foregoing offers of letters are objected to as immaterial & incompetent.)
Q. Was this letter received from De Graff & Co. at or about the time of its date?
(Paper marked Exhibit No. 30.)
A. I presume so. It is in the handwriting of Col. Crooks. Governor Smith had been arranging for this contract, and I had suggested some modifications. I do not remember whether he had submitted formal proposals to Governor Smith before this or not.
Q. After your letter of October 20, 1871, were De Graff & Co. informed as to the progress which had been made in the sale of the bonds?
(Objected to as incompetent & immaterial.)
A. Mr. William Lane had all the information I had. He saw the correspondence and telegrams, particularly towards the conclusion, after there was difficulty in regard to money.
374 Q. Was any subsequent contract made with De Graff & Co. in reference to building the bridge across the Mississippi, and, if so, how were the proposals solicited and received for that work?
A. These are the proposals from the different parties, including one from De Graff & Co., and this is the draft of an agreement in the handwriting of the chief engineer of the company, sent to me after having been executed by DeGraff & Co.
(Papers marked Exhibit, Nos. 31 & 32.)
(Exhibit No. 32 is objected to as immaterial.)
Q. When did the differences first begin in respect to remittances from abroad?
A. In the summer of 1872.
Q. Was this letter received from Col. Crooks?
A. Yes, sir; (paper marked Exhibit No. 33.)
(Objected to.)
This letter was received in June, 1873, and not 1872, as endorsed.
Q. When did the remittances cease?
A. A long time before the work stopped.
Q. Were request made of you during the summer of 1872, by or on behalf of DeGraff & Co., for payments on account of estimates?
A. At or about the time of stopping the work Colonel Crooks came in person to my office in Philadelphia, representing the necessity
375 of having bonds at once to pay laborers and others on the line of the road, to prevent a riot and destruction of the property of the company and of DeGraff & Co. I informed him that I was already largely in advance to the company. The only security that I held, or property that could be available of the company's was iron shipped from London, as agent, which, if I were authorized by the company (St. Paul & Pacific First Division) to hypothecate, I might be able to raise money upon it. Crooks suggested cabling to Amsterdam—sent a cable in his own name asking for money, or the work would stop, and great damage ensue. He wrote the cable in my office. I also cabled urgently to Lippman, Rosenthal & Co. to send money to pay the contractors, or the work

would absolutely stop, at very serious expense to the company. The reply was that there was no money from sale of bonds, and so no relief was obtained. General Becker, who was in New York a little while previous to this, apprehending this condition of affairs, gave me a letter, as president of the First Division St. Paul & Pacific Railroad, authorized me to hypothecate the iron of the company, to the amount of $500,000,
376 more or less, as an amount absolutely necessary to meet the June and July estimates for construction account and for freight duties, &c. This letter was dated August 31st, 1872. (Letter marked Exhibit No. 34.)

(Objected to.)

I attempted to obtain a loan, but did not succeed. General Becker then sent me authority, under the seal of the company. This is it (paper marked Exhibit No. 11, eleven). A meeting of the board was then called to meet at Chicago, at which they passed a resolution, of which this is a copy, (paper marked Exhibit No. 12.) Upon this authority I obtained a loan of $300,000, of which $225,000 were immediately sent to Mr. Becker, First Division office, St. Paul, and by him used to pay De Graff & Co. and others. After failing to procure money from Amsterdam, DeGraff & Co. were very anxious to obtain security through the iron or other property belonging to the company. Mr. Lane represented himself to me as their agent, and visited me daily to get all the security that he could. I assured him that I would do all in my power to accomplish his wish; but that I had borrowed a large amount in New York, in addition to the first loan, to pay freights, duties on iron, and
377 for the joints, splices, &c., which would have to be paid first, as those debts I felt individually bound for, having been contracted by myself; to which Mr. Lane made no objection, but said, "After you get back all that you are personally liable for, transfer to DeGraff & Co. all the iron that is left." This I promised to do. I wrote to Minnesota to ascertain the quantity of the iron. This is a copy of a letter written to B. S. Russell, agent at Duluth of the company, (paper marked Exhibit 35), and this is a copy of a letter addressed to Geo. Becker on the same subject (paper marked Exhibit No. 36). On the same day I executed a bill of sale, which was drawn up by Mr. Lane, as the representative of DeGraff & Co. This is the paper (paper marked Exhibit 39½). The negotiation with reference to this iron was finally consummated on December 27, 1872. This is a memorandum of the agreement of purchase made on that day (paper marked Exhibit No. 21).

This is the receipt for the amount at which the iron was taken (paper marked Exhibit No. 37). And this is a letter of advice from Mr. Russell on the subject (Paper marked Exhibit No. 38).

378 Q. What amount did you receive from the proceeds of the bonds?

A. £320,000, or $1,726,650, all of which was disbursed for construction purposes.

Q. What conversations have you had with any of the defendants with reference to this action?

A. When in St. Paul, the time this action was brought against me, I saw Col. DeGraff (Andrew DeGraff) at the railway station, as our party, attorneys and others, were leaving for Davenport—about three days perhaps after this suit was brought against me—when De Graff came up and shook hands very pleasantly, saying "I never supposed you were individually liable to us until I saw it in Becker's affidavit, which is the reason I give you for commencing this action."

Q. At the time when Col. Crooks was here, in the fall of 1872, and

asking you to raise money on iron and other property of the company, state whether you were or were not in good credit?

A. I was in good credit—was worth $3,000,000 outside of Jay Cooke & Co.

Q. At the time, or down to the issuing of the writ served on you at St. Paul, was any claim or demand made by any member of the firm of DeGraff & Co. on you personally.

A. No, sir.

379 Q. Did any of them intimate to you that they held you individually responsible under their contracts?

A. Never an intimation from any one.

Q. In what manner did they receive your action in reference to the iron, in your efforts to relieve them?

A. Very kindly. They felt greatly indebted to me, and so expressed themselves. They were very thankful to me. They did not ask for a dollar from me as an individual, but only from the company, though they were pressed for money. I told them I was already in advance and must be paid that first.

Q. These agreements refer to the chief engineer of the party of the second part. Had you any chief engineer?

A. No, sir. The engineer was Mr. Morris, chief engineer of the St. Paul & Pacific.

Q. The party of the second part was to furnish such motive-power and cars as might be necessary. Had you any motive-power or cars?

A. No, sir. They were the motive-power and the rolling-stock of the First Division St. Paul and Pacific.

380 Q. The party of the second part was to furnish all the splices, bolts, frogs, switches, and iron. Did you furnish individually any of them?

A. Wilmar bought the iron with the proceeds of the bonds. I bought the switches, &c., as construction agent of the company. They were paid for by the company with the company's money.

Q. (Letters shown witness annexed as Exhibit .) Have you any recollection of having received that letter?

A. I have no recollection of having ever seen or received this letter. I have searched for it without avail.

Q. Did you have any conversation with General Becker with reference to the contracts with the defendants, DeGraff & Co.? If so, what did he state?

(Objected to.)

A. I asked General Becker in his office at St. Paul, in October, 1874, whether if he had sent De Graff & Co. to him to make the contracts for the works he would have made them with them, and he said that he would have done so.

Cross-examination by Mr. CLOUGH:

381 The firm of Jay Cooke & Co. first became connected with the Northern Pacific Road in 1869. At that time the firm was composed of Jay Cooke, William G. Moorhead, Henry D. Cooke, H. D. Fahnestock, and Pitt Cooke. I am the William G. Moorhead. Those persons continued to be members of that firm until bankruptcy intervened. No part of the Northern Pacific Road was built when the firm became its financial agents. It was an organized company at that time.

Q. Had the company at that time any capital outside of the concessions made by the government?

A. I think not. It had not, up to that time, attempted to construct any part of its line of road. The Northern Pacific Railroad Company made a contract with Jay Cooke & Co. as finacial agents to sell their bonds upon certain terms—receiving a commission, I think, of ten per cent. Jay Cooke & Co. were to be the financial agents to negotiate all the bonds of the road. In this contract it was contemplated that the company should construct its road from Lake Superior tothe Pacific Ocean as rapidly as possible, and to facilitate this they were to issue bonds secured by a mortgage on their property and franchises, all of which the firm of Jay Cooke & Co. were to negotiate. The entire amount of bonds contemplated was $100,000,000.

382 The negotiation of the bonds was to be pushed as fast as possible both in Europe and in this country; no time was specified, however, in the contract. The firm first put the bonds in the market previous to my return from Europe. Some months previous to my return Mr. Cooke arranged a syndicate for five or six millions of bonds, which were placed in Pittsburgh and here privately, which amount was applicable to the construction of the road to the Red River. Through agents the firm pushed these bonds in all parts of the United States and Europe. These efforts continued until early in 1873. Jay Cooke & Co. became stockholders in the Northern Pacific within the first year of its relation to the company. The syndicate of which I have spoken became, as it were, proprietors, and held a large amount of the stock. The firm of Jay Cooke & Co. was a member of that syndicate. I do not think they had the largest amount in interest of any of the nembers of the syndicate. The firm have always been large stockholders, that is, since the sale of the first bonds. They were not original stockholders for themselves and others, but when they were agents with power of attorney they may have held a majority of the stock. I

383 returned from Europe in June, 1870. While in Europe I had an interview with L. Wilmar and several with Mr. Litchfield. This vas probably in July, 1869. These interviews referred to the purchase of Mr. Litchfield's interest in the St. Paul and Pacific Road for the Northern Pacific. These suggestions were his. I had no authority from Jay Cooke & Co. or from the Northern Pacific to make any negotiations. I saw Mr. Litchfield several times while in London and obtained his figures, which I sent over to Mr. Cooke. The proposition was to purchase all of Litchfield's stock. I then went to France and Germany, and returned to London in October or November, when I informed Mr Litchfield the negotiations were ended, as I had letters to that effect. The first I heard of any resumption of negotiations was in the following year. They were resumed in the late fall of 1870, when Mess. Wilmar and Litchfield came to New York. I had at this time informed myself generally as to the financial history of the St. Paul and Pacific Road. Our firm (Jay Cooke & Co.) did not think it important for the Northern Pacific to control the other roads, including the St. Paul and Pacific. Mr. Cooke disapproved of it and I was indifferent, but the board of directors of the Northern Pacific did think

384 it important, and without consulting Mr. Cooke at all decided to purchase these roads. I was selected by the parties in interest in the Northern Pacific to conduct the negotiations on its part. My duty was simply to ascertain the lowest figure at which the purchase could be made, and left it with the company to investigate. At that time the mainline of the First Division of St. Paul & Pacific was partially construced, but work had been suspended for want of funds. I then learned through Litchfield of the condition of affairs, and that he

had the contract for the construction of the road. All the stock, practically, of the two roads was finally purchased and held in trust by Geo. Becker for the Northern Pacific Road. About the time of the sale and transfer it was determined to go on with the extension lines. There had been a large grant of land to the St. Paul & Pacific to aid in its construction, which would expire March 1, 1872, and hence it was considered that a good deal of despatch would be needed to complete the lines within that time on account of their length. The arrangement between Mr. Wilmar, Lippman, Rosenthal & Co. and the companies in this country were perfected after the transfer of this stock, and in them I acted as the agent of the Northern Pacific. At the time of the
385 purchase of the stock there was an arrangement made by which a majority of the board of directors of the First Division of the St. Paul & Pacific Road resigned, and their places were filled by directors of the Northern Pacific Company, of whom I was one.

Q. How did you arrive at the amount of money which it was necessary to raise to complete the extension line?

A. That calculation was made by the board, the Northern Pacific Company, Wilmar, and, I guess, Becker; but Wilmar stated that the estimate must be made large enough to accomplish all that was desired. There had been no surveys of the line from which exact data could be obtained, but we estimated the number of miles. It was understood that the $15,000,000 issue of bonds should include also sufficient to net $1,500,000 cash, which should go to complete the main line. It was insisted on by the representatives of the bondholders that it was necessary that the main line should be completed in order that the bonds could be negotiated and funds raised to build the extension lines. Mr. Wilmar stated that it would be necessary to make the bonds for the extension lines precisely like the bonds for the main line.

386 Q. You then made yourself familiar with the scheme for placing the bonds of the First Division for the building of the main branch road?

A. Yes, as represented by Mr. Wilmar. I had no other source of information.

Q. Were not the details of the scheme for the negotiation of the bonds of the First Division Company also discussed with you by Mr. Becker and Mr. Litchfield at the same time?

A. No, sir; I knew that the same financial agents had placed the bonds of the First Division, and, as stated in my testimony, Mr. Wilmar said that the same plan had to be pursued in getting up the bonds, &c., &c. I do not remember of any conversation with Becker and Litchfield on the subject. Mr. Becker had previously told me that he had gone to Europe in connection with the matter. Mr. Becker was not present at all times during these negotiations, and I do not think he was present when the matter was closed. Wilmar and Litchfield were present. Mr. Becker was in New York, however.

Q. Did not Mr. Becker participate in all the arrangements for making the loan?

A. Yes, all the general arrangements. I understood that he had come to New York on this matter. Mr. Wilmar said that there
387 should be an informal contract with some one to build the road, so as to conform with their usage. I knew previously that Mr. Litchfield was the contractor for the main line of the First Division; I learned this fact in London, before the negotiations commenced here, from Mr. Litchfield himself. He did not state to me the terms of his contract, except as to the general terms of it. I first became acquainted

with these terms in London. I also knew at *at* the same time that he was the sole stockholder in that line. He did not explain to me why, under these conditions, he became contractor for the line. I never knew, specifically, that his taking the contract was part of the scheme insisted upon by Lippman, Rosenthal & Co. in connection with their negotiation of the bonds of the First Division; I only know that the negotiations resulted in his taking the contract. I first knew of this in London, and subsequently Mr. Becker told me about it in St. Paul. I understood that it was part of the arrangement for the negotiation of the bonds. Mr. Wilmar desired a contract with me for the extension lines—an informal one, as he said. I do not know the Litchfield contract in the matter. I would not have entered into any such contract as I understood
388 Litchfield's to be. I never saw his contract, however. I understood from Mr. Wilmar that Lippman, Rosenthal & Co. had a regular plan or system for advancing money in the negotiation of the bonds of these roads, and that it was necessary to retain the details of that system in order to make the loan successful, and that it was on that account that some one should contract for the construction of the road. Mr. Wilmar was the one who first suggested that I should take the contract. All the arrangements were made in the fall of 1869, before Wilmar returned, although they were not all committed to writing at that time. The question of Mr. Litchfield's making profits on his contract was not discussed or mentioned between him and myself. I did not understand he was making profits. Wilmar stated that Litchfield had largely overdrawn his account with Lippman, Rosenthal & Co., which amount they subsequently deducted from the proceeds of these bonds. The subject of making profits, however, was not mentioned or talked of. I do not recollect having heard it stated that Litchfield made large profits on his contract; on the contrary, from the correspondence I had with Litchfield, I supposed he lost money. That correspondence took place during the year, after this arrangement was made, when Becker
389 was pressing for a settlement, and both Litchfield and Wilmar insisted that Becker had overcharged. He had an account bringing Litchfield in debt a large amount which Wilmar insisted was unjust and unfair. I never had any conversation with Litchfield on the question of whether his contract was or was not a genuine contract for building the road. At the time the arrangement was perfected for the negotiations of the bonds, before Mr. Wilmar returned to Europe. No time was fixed as to when the results of the negotiation should be put upon paper and formally executed. I do not think it was understood at the time the negotiations were made that the Northern Pacific should pass the resolutions set out in Exhibit 10. The subject of the passage of the resolutions was broached between myself and the company a very short time before their passage. Copies of the resolutions were not given me. I was a member of the board and knew that they had passed. They were passed at my instance. As all the stock of the First Division was owned by the Northern Pacific, and a majority of the directors of the First Division were directors of the Northern Pacific, I regarded the two companies as one, and as I had signed a contract which the
390 directors all understood, as well as the reason of my signing it, I said to Governor Smith and the board that I thought a resolution should be passed that the fact of my having signed it without any personal interest in it, and only for the purposes designated, should be placed on the minutes of the company. The board acquiesced in the suggestion, and, on motion of Governor Smith, the resolutions were passed. It was the design when the arrangements were made, that the

work should be commenced and pushed as rapidly as possible on account of the early expiration of the land grant. I can't say with any certainty how soon after these arrangements were made I saw De Graff & Co. with a view to employing them in the construction of the road. Several months were consumed in the preparation of the papers. I have no distinct recollection that in April or May, 1871, Colonel Andrew De Graff and Colonel Crooks visited me in Philadelphia to solicit the contract. Were it not for the letter annexed as Exhibit No. 4, I would say that I never received any such visit from these gentlemen, or either of them.

(NOTE.—Mr. Clough calls for the production of the original letter, of which Exhibit No. 4 is a copy.

391 Letter produced, No. 4.)

I communicated with Mr. Becker at once, and made arrangements for construction of the road; I gave no positive instruction to Mr. Becker, that I recollect, in regard to letting the work. The Northern Pacific Company did, at the time he received bids, and they requested him to send the bids to New York to be finally acted upon by the board. I happened to be in St. Paul at that , and know that fact. General Becker was instructed to insert advertisements in the newspapers for proposals for building the Brainerd Branch; but I do not recollect that I gave the instructions. I do not know that I did this for the purpose of procuring the work to be done at the lowest possible price; I know that I always urged the engineer to have the work done at the lowest possible figures; I refer to Charles A. F. Morris. The correspondence between Mr. Morris and myself took place during the construction of the work, and before it was commenced. I do not recollect that I instructed Mr. Morris to advertise for proposals for the Brainerd Branch. I was in St. Paul when the first bids for that branch were received from General Becker's office; and General

392 Becker was then instructed to send the bids to New York. As I was going to New York, I offered to take them, and did so take them. The president of the Northern Pacific had positively instructed General Becker to forward the bids, so that the board could pass upon them. I think, upon reflection, that General Becker forwarded the bids himself, and that I did not take them; I proposed to take them, but General Becker told me that his orders from the president of the Northern Pacific were to send the bids without delay.

Q. Why were the proposals to be forwarded to New York?

A. The board of the Northern Pacfic was in session in New York, and desired to see the bids before allotments were made. General Becker was president of the St. Paul & Pacific road, and had a right, I think, to advertise and receive bids, and let the work; he told me he had been ordered to send in the bids.

(NOTE.—Witness' attention is called to the resolution, Exhibit 39.)

Q. Were you present when those resolutions were adopted?

A. I was.

Q. At whose instance were those resolutions passed?

393 A. On my motion, as appears by the minutes; the contract *contract* was let at that meeting of the board.

Q. Was anything done under those resolutions?

A. Yes, sir; the surveys were charged, and the bid of Wallace & Co., which meant De Graff & Co., was accepted at that time; the bid, as it seemed in the bill, was verbally made by Colonel De Graff, or, rather, modified by a reduction of price by a member of the board at that time. His price, as set out in the original bid was several hundred dollars

higher per mile. This resolution directs a contract to be entered into with De Graff & Co., and directs General Becker, the president of the company, to enter into the contract. General Becker never did enter into any such contract, except as through me, as agent. The three contracts already produced, Exhibits 22, 23, 24, were the only ones ever executed, to my knowledge. The resolutions were passed August 7, 1871. I know of no reason why Becker did not act in accordance with the resolutions and execute a contract, except that I was considered as the general agent, and the contractors came to me. The proposals referred to in the resolutions were not forwarded
394 to the North. Pacific board. They were accepted at that meeting. The reason why the contract was not immediately made, was a want of funds, and it was before the completion of the Breckenridge line. All the funds went to that line until it was completed. It was some two months after the passage of the resolution before a contract was made with De Graff & Co. A member of the firm of De Graff & Co. was in New York when the proposals were made for constructing the Pembina line. I was present also. They had already given their proposals to Gov. Smith, president of the Northern Pacific. I think the gentlemen had been to see me between the last named meeting and the prior meeting in St. Paul. My recollection is not distinct. I do not recollect whether advertisements in connection with the Pembina branch. I believe there were none. The terms of the contract were finally agreed on in New York. This was in the early part of October. I do not think that there was any understanding in New York as to when and where these contracts should be executed.

(NOTE.—Witness shown original draft of Exhibit No. 22.)

Q. When, where, and from whom did you get that paper?

395 A. I think I received it from St. Paul by mail, and from Col. Crooks. I am not sure of that, as he may have handed it to me. He gave it to me as a general form by which the contracts were to be made. I can't state when I received it, but it was prior to the date of the contracts. It was sent to me as a mere form, and not with the design that this paper itself should be signed as the contract.

(NOTE.—The witness is referred to writing in red pencil.)

That writing is my own. The space was blank when I received the contract. This form relates entirely to the Brainerd Branch, but was given as a form for all the contracts. I don't remember that this was received several weeks before the meeting in New York relative to the branches other than the Brainerd. It was received some time before. I have no recollection that De Graff & Co. ever presented to me, prior to the presentation of this form, any form of contract which they would be willing to enter into. I have no form in my possession except this one, to my knowledge. This one was sent to me before the acceptance of the proposals in New York; before the contracts were made,
396 at any rate after the acceptance of the proposals, it was understood that I was to prepare the contracts here and send them to De Graff & Co. in Minnesota for signature. De Graff & Co. never to my knowledge submitted a draft for a contract for the Pembina Branch.

(NOTE.—Witness shown Exhibits 22, 23, 24.)

I caused these contracts to be prepared here. No member of the firm of De Graff & Co. was present when they were prepared. They were prepared by the secretary furnished me by the companies, under my direction. I told the secretary what to draw up, and the papers just as they are now, except the signatures, were written in Philadelphia. I read them over after they were drawn and then signed them, and then

forwarded them to Gen. Becker for De Graff & Co's signature. They were afterwards returned to me, one copy being retained there. They were prepared in duplicate. The sale of bonds under this arrangement commenced about May or June, 1871. The understanding with De Graff & Co. was, that they were to begin work when instructed to do so; they were then on the Breckenridge Branch. They commenced on the Brainerd Branch without my consent, if I recollect aright. I don't think I received any answer from them to my letter of Oc-
397 tober 20, 1871. I am not certain whether I heard from Becker in response to that letter. I had a great deal of correspondence with him, and but little with De Graff & Co. The difficulty in the negotiation of the bonds occurred in June, 1872. The bonds sold well when first offered, but declined sometime before the difficulty occurred. I think I had other communications on the same subject-matter with De Graff & Co. than my letter of October 20, but through Mr. Morris, not directly with them. I generally kept myself informed as to the state of the work, and furnished the money to Becker with which to make the payments. As the money was received by me I sent it to Becker. In respect to the purchases of iron by Mr. Wilmar, he bought by my authority, his correspondence being with me entirely. The engineer provided patterns which were sent over, and by them the iron was made. Mr. Wilmar made the purchases.

Q. By whose authority did he make these purchases?

A. By authority of Lippman, Rosenthal & Co., as the money was paid by them for all the iron; not a dollar of the iron-money passed through my hands. Against my earnest protest, he paid all cash for it. De Graff & Co. were finally ordered to suspend work through
398 the engineer, at my request. I told him, the engineer, that the Dutch were sending no money, and that the work must stop. I don't think any prior notice had ever been given them to stop, unless Becker had given it.

(NOTE.—Witness shown Exhibit No. 34.)

Q. Who drafted that paper?

A. I think, from the handwriting, that the paper was written by an attorney in New York, Mr. Holmes.

Q. At whose request was it drafted?

A. Mr. Becker and myself were there, and Mr. Becker proposed to give me authority to borrow money. Mr. Holmes then prepared this. I have no recollection of myself suggesting this form. I only remember that Becker proposed to give the letter.

Q. At whose instance was the last clause inserted?

A. General Becker's. He drafted the second one himself, and at his dictation the clause inquired of was inserted. It is not a fact that all these arrangements were made at my suggestion and with a view to my own protection; the purpose was simply to provide for the raising of money, and the phraseology was General Becker's. I did not know where I could get money on the iron, before this paper was signed. I finally raised the money through a loan agency, parties whom
399 I had never seen before. The security was ample for the amount of money raised on it. Most of the money raised under this paper went to Becker and DeGraff & Co., and it was at their earnest solicitation that the loan was effected. By the June, July and August estimates are meant the estimates under this contract. I do not think General Becker came to New York at my instance in this matter. If he came at any one's suggestion on this particular business, it was at the suggestion of DeGraff & Co.

Redirect examination:

Mr. Lane was an attorney at law, and on behalf of DeGraff & Co. he drafted the bill of sale of the iron. He represented himself as their agent.

Q. Did you receive this letter from General Becker?

(Paper hereto annexed marked Exhibit No. 40.)

Yes, sir.

Q. In whose handwriting is this letter?

(Paper annexed marked Exhibit No. 41.)

A. Col. Crooks'. It was forwarded to me by General Becker.

Q. By whom was this letter written?

(Paper annexed marked Exhibit No. 42.)

400 A. By Mr. Randall, chief accountant, First Division Company, and forwarded to me by General Becker.

Q. In what form were the vouchers taken for payments made by General Becker at St. Paul?

A. In the name of William G. Moorhead, construction agent, in the form now produced.

(Paper hereto annexed marked Exhibit No. 43.)

Q. You have said, on cross-examination, that General Becker had been directed to forward the proposals to the Northern Pacific Railroad office at New York; please state why they were forwarded to the office of that company.

A. The board being in session wished to see the bids before they were accepted. The president of the Northern Pacific wrote to send them on, so that they might be seen before making the allotments. The majority of the St. Paul & Pacific board were in New York, and were directors of the Northern Pacific. The Northern Pacific were heavy stockholders, and wanted to know exactly what was proposed to be done. The construction of the work was in charge of a committee appointed by the Northern Pacific board. I do not think that there was a final measurement of the work done by the engineer, as requir-

401 ed by the terms of the contract. I do not not remember to have seen any first statement. I can't say, without examination, whether any extra work was done. That was all kept in the office at St. Paul, and Mr. Becker simply sent me the gross amounts due. I have never seen the detailed estimates. DeGraff & Co. employed an agent at Duluth to attend to the shipment of iron. This was outside of the contract. They paid him and should be allowed his salary. His name was Eldridge. The claim, $1,153.40, cannot be far out of the way. As to extra work the chief engineer is always umpire. I did not induce the plaintiff to believe that the work would be begun in a few days from the date of the contract. DeGraff & Co. themselves knew the condition of the lines.

Q. From the time when the paper of May 12, 1871 (Exhibit No. 3), was executed down to the present time has any claim ever been made by or on behalf of the First Division St. Paul & Pacific Railroad Company against you as a contractor to build the road?

(Objected to, on the ground of immateriality, and the question asks for conclusions and not for facts.)

A. No, sir; not in any way.

402 Recross-examined:

After the passage of the resolutions set out I do not recollect that I had any communication with the president of the First Division St. Paul & Pacific Railroad with reference to the execution of a contract in pur-

suance of the resolution. So far as I know nothing was ever done under the resolution, i. e. Gen. Becker never did execute a contract.

Q. When did Mr. Lane first commence to communicate with you on this business?

A. About May or June, 1872. I am certain that the subject of the party to the contract, other than DeGraff & Co., was frequently discussed by us, and he knew that the other party was the First Divison St. Paul & Pacific Railroad, and that I was simply acting as agent; that he knew as well as I did. He commenced to communicate with me after his return from St. Paul.

RICHARD W. DORPHLEY sworn:

I reside in Philadelphia, 622 South Washington square. I am in the insurance business. I have been a professional accountant; as such I visited St. Paul, at the instance of William G. Moorhead, to in-
403 vestigate the affairs of the First Division of the St. Paul & Pacific Railroad Company. I was there eighteen months, and returned in August, 1873. I knew one or two members of the firm of DeGraff & Co. They were in the habit of visiting the office of the company. I refer especially to Colonel Andrew DeGraff and Colonel Crooks. I had a conversation with Colonel Crooks respecting a claim under the contracts for the construction of the road. It was in the office of the company. I can't state the date, but my impression is that it was in the summer of 1873. To the best of my recollection, Mr. Morris, chief engineer of the company, was present, besides Colonel Crooks and myself. We were speaking of the claim of DeGraff & Co. and its then position, and Colonel Crooks stated to me that he never regarded Mr. Moorhead personally as having been liable to them, as they understood his position in this whole matter to have been simply construction agent for the parties interested. We had a general conversation, but I do not remember further particulars. I had another conversation with Colonel Crooks in New York. I met him in the Albemarle House, in the autumn
404 of 1873, when he reiterated in substance what he had said to me in St. Paul.

Cross-examined:

I have a general recollection of the institution of the suit of Kennedy & Co. I was in St. Paul at the time. I did not return to St. Paul from New York after my conversation in Albemarle House. I left St. Paul in August, 1873. The conversation at which Mr. Morris was present occurred during the same summer, but I cannot fix the exact date. I was conversing with Mr. Moorhead in the Metropolitan Hotel, St. Paul, where a writ was served on him. It was during the evening. This was at the suit of DeGraff & Co. My impression is that the conversation in the company's office was before the commencement of the DeGraff & Co. suit, but I cannot give any idea of how long before. DeGraff & Co. knew that I had been sent to St. Paul by Mr. Moorhead. I do not know that the question of Mr. Moorhead's liability was discussed between Colonel Crooks and myself. He simply volunteered the statement which I have given as coming from him. The question of who had exe-
405 cuted the contract was not discussed by us. I don't recollect of anything having been said about Mr. Moorhead's being the contractor and being in fault in the matter. There was nothing said about there being a contract with Mr. Moorhead about the building of the line. There was nothing said by Colonel Crooks about the contracting parties. He came up to me and, without much of any preliminary con-

versation, made the statement which I have already sworn to. The conversation in New York was after the commencement of the sut against Mr. Moorhead. He then said that he did not, nor did his firm, consider Mr. Moorhead personally liable, but that he was simply the agent of the company. Mr. A. F. Beach was present. The conversation took place in the office or gentleman's parlor of the hotel. This conversation arose in the course of a general conversation about the affairs of the railroad company. Mr. Beach had been a subcontractor on the road. Colonel Crooks was a guest at the house then, I believe. It was either in August or September, 1873, I think in August. I
406 am certain that this was after the suit had been commenced, because I was present in St. Paul when the summons was served, and I did not revisit St. Paul after my return east. The suit was referred to, I presume, to call out Crooks' remark; but I cannot remember the details of the conversation. It was a general conversation conducted principally by Colonel Crooks and Mr. Beach.

Redirect examination:

I don't know that I can recall the Beach and Crooks' conversation, except that Beach had an unsettled account with De Graff & Co., and was anxious to have it paid, or to ascertain the chances of a settlement, and this led him to inquire into the prospects of a settlement of De Graff & Co.'s claim, under their contract with the company. The substance of Crooks' reply was that the matter was in suit, and that he hoped to make his money. I think the question was asked as to whether his firm considered that they had any claim against Mr. Moorhead, to which he replied that he did not, nor did his firm, as they considered him simply construction agent. I understood that Mr. Moorhead and
407 the parties abroad wanted a full investigation of the affairs of the company for information, and my report, when made, was sent abroad. I went back to the commencement of the enterprise, when Litchfield and Becker had control of the company.

Recross-examination:

Colonel Crooks said that he did not consider Mr. Moorhead liable; but in the same conversation he said De Graff & Co. had sued and hoped to make their money.

Redirect examination:

The Kennedy suit was also pending at the same time.

408 *Deposition of Samuel M. Fellows, on behalf of plaintiff, taken March 20, 1875.*

R. L. Ashhurst, e'q'r, appeared for plaintiff; W. P. Clough, e'q'r, appeared for defendant.

SAMUEL M. FELTON, having been sworn, deposes and says:

I know Mr. Moorhead; I knew the St. Paul & Pacific Railroad Company and the Northern Pacific; I was formerly director of the latter, from the date of its reorganization in 1869 to 1872, I think; was tolerably familiar with its affairs after I resigned, being a stockholder and bondholder, and calling frequently at its office; I think I was a director of the St. Paul & Pacific, but only for a very short time; the two were very intimately connected, in fact the Northern Pacific was substantially the owner of the St. Paul & Pacific; I was frequently on committees of the Northern Pacific to look into the affairs of the St. Paul & Pacific; I rec-

ollect Mr. Wilmar, one of the bankers who negotiated the bonds in Germany, being over here, and making the point that Mr. Moorhead should be agent to receive the proceeds of the bonds and to see that the
409 money was properly and honestly disbursed in the construction of the several branches of the St. Paul & Pacific. (Witness is requested to examine Exhibit 3.)

I was not present at the execution of this agreement, but presume it was a matter of mere form. The reason of the making of this agreement was, I presume, because the bankers in Europe wished a person on whom they could rely to see that their money was properly expended in Minnesota. Mr. Wilmar was the only one of the foreign bankers whom I saw. I judged him to be the representative of them. I met Mr. Becker a number of times, but do not remember that I saw him on this particular business. I had no conference with Mr. Becker, or any other person, except with Mr. Wilmar, in reference to the appointment of Mr. Moorhead as agent.

Q. Can you say whether Mr. Moorhead was to derive any benefit from this contract?

(Objected to by Mr. Clough as incompetent and immaterial.)

A. It was not expected by any one that Mr. Moorhead was to derive any benefit whatever from this contract for building the road.
410 Mr. Moorhead at the time frequently so stated to me.

Q. Was anything said by Mr. Wilmar or did anything transpire in the conversation between you to indicate any expectation of any liability on Mr. Moorhead's part further than for the faithful application of the proceeds of the bonds?

(Objected to as incompetent and irrelevant.)

A. No. I knew that contracts were subsequently made by Mr. Moorhead, as constructing agent, with Messrs. De Graff & Co. I knew that either as director of the Northern Pacific or from familiarity with the affairs of the latter. On reference to the date, I find that it was while I was director.

Q. What was your understanding of Mr. Moorhead's position in regard to those contracts?

(Objected to as incompetent & immaterial.)

A. That he was merely the agent, as I before stated, to see that the money was properly expended and the work properly done, having no interest whatever in the profits of the contract or in its losses—no pecuniary interest whatever.

Q. Can you say from your own knowledge of these transactions whether Mr. Moorhead was recognized as agent of the St. Paul and Pacific or First Division Company for construction of these several branches
411 of the St. Paul and Pacific?

(Objected to as before.)

A. Mr. Moorhead was recognized as such agent. (Answer objected to as being indefinite and giving simply conclusions of witness without any statement of facts.) He was so looked upon by me and all my associates. I never heard anything to the contrary, or any intimation that Mr. Moorhead was the principal contractor there. By "associates" I mean the other directors in the Northern Pacific. Gov. Smith, the president, Judge Rice, Mr. C. V. Wright, of Philadelphia, Mr. Moorhead himself, Mr. Billings, General Cass, Senator Windom, of Minnesota, and one or two others were directors. The subject of construction of the branches of the St. Paul & Pacific leased to the First Division Company was frequently under discussion among the directors. Mr. Stinson was also director at that time, and possibly Mr. Canfield. The con-

struction of the St. Paul & Pacific was frequently talked over among the directors of the Northern Pacific. My impression is that I was also a director of the St. Paul & Pacific at this time, but the two were so intimately blended that I cannot recollect positively.

412 Q. Did the two boards act in harmony in those matters?

(Objected to as incompetent & immaterial.)

A. They did, as far as I know, act in harmony. My impression is that the majority of the two boards was the same in each—I mean of the Northern Pacific and the First Division of the St. Paul and Pacific. I met Mr. Becker frequently at New York and Philadelphia, and in Minnesota during my connection with the Northern Pacific. I think I met him during 1871. I don't remember Mr. Becker being present at any of the conversations and discussions as to the contracts of construction of the extension lines of the St. Paul and Pacific. He may have been, and probably was. I do not think the contract of May 12th was ever acted under; I never understood it was. I don't mean to say the roads were not built. I mean that they were built under a different contract so far as they were built. I understood they were built under the contract with DeGraff & Co.

Q. Had Mr. Moorhead authority from the First Division Company to make contracts for the construction of the extension lines?

(Objected to as before.)

413 A. I have no doubt of it. I cannot say positively whether there was a vote passed to that effect or not, but I am certain that he had authority.

(Objected to as stating witness' impressions without any knowledge of the subject.)

Q. At the time of these transactions did you ever understand or hear from any one that Mr. Moorhead was to assume any personal liability in the matter?

(Objected to as before.)

A. I never heard the slightest intimation from any one that Mr. Moorhead assumed any personal responsibility at all.

Q. When did you first hear of such intimation?

(Objected to as before.)

A. I think in September, 1873, or in October, 1873. I met Mr. Moorhead in St. Paul. He was there on some business and had had a writ of some kind served on him.

Cross examination by Mr. CLOUGH:

I do not know that I can give the precise date when the relations between the Northern Pacific and the First Division Company commenced. The interest acquired was nearly the whole of the stock. Mr.

414 Litchfield (E. D.) of London had a large portion of it; Mr. E. Rice had also a portion; Mr. Rice's, however, was the St. Paul and Pacific, not the First Division. My impression is that nearly all the First Division stock was owned by Mr. Litchfield. At that time the First Division Company was regularly organized and had a board of directors and officers. It continued to remain so, I presume, and has ever since. I always supposed it transacted its business through its officers and board of directors.

Q. Did you ever understand that either the Northern Pacific Company or its board of directors was the agent of the First Division Company?

A. I cannot say. I presume that they had a great deal to do with its

affairs. When a man or corporation owns the stock of a railroad either would naturally have a great deal to do with its affairs, having the power to elect such a board of directors, and to decide upon such a policy as they might wish. I do not know of any resolution by the board of directors of the First Division Company authorizing the board of directors of the Northern Pacific to act as agents for the former.

415 Q. Did you ever suppose that the First Division Company acted otherwise than through its board of directors or its officers?

A. It might also act through its agents, who might or might not be members of the board.

Q. Did you ever suppose that any one had authority to act as agents for the First Division Company unless he was authorized by the board of directors or some officer or officers to act as such agent?

A. He might be authorized by the president to do a certain thing within the president's sphere; the same with the superintendent or treasurer.

Q. Did you ever suppose that the board of directors of the Northern Pacific had any authority to appoint agents to act for the First Division Company?

A. I suppose that would have to be done by the organization of the First Division Company. I do not remember that I was ever an officer or a member of the board of this company. I cannot tell who were officers or members of the board of directors of the company in 1871, except Mr. Sewell and the president, George L. Becker. I may

416 know the other directors, but cannot say positively. I do not know absolutely that Mr. Wilmar had authority to represent the First Division Company, but I understood that he did represent it at the time he was over here, about the time when the stock was purchased, it might have been before that. I understood that he was the representative of the moneyed interest, owning the bonds. He did not show me written authority to contract for the construction of the extension lines, but he was generally understood to be the leading spirit in saying how things were to be done. I understood this principally from himself.

Q. Did you ever understand from the board of directors of the First Division Company that Mr. Wilmar had any authority to act for it in contracting for the construction of the extension lines?

A. I never heard it doubted. I think Mr. Becker so understood it. That is my impression. I think Mr. Wilmar had negotiated the other bonds and was talking about these. He was regarded as identified with the road, through the loans, from the beginning. The money power is the power in constructing a railroad. I was never present at any

417 meeting where a vote was passed in regard to taking the loans, but I was present several times when the matter was discussed. I think I heard the plan or scheme for negotiating the loan, tho' I don't know that I could describe what it was. I think it was understood that the plan for the negotiation of this loan was the same as in the case of the previous loans to the First Division Company. I cannot say that any part of the plan related to the letting of the construction of the road to responsible parties. I never heard Mr. Wilmar state anything about letting the contract to a responsible man; what he did state was that there must be some responsible man to see to the expenditure of the money, and that the contract was properly carried out. I did not know that in the prior loan of the First Division Company these parties negotiating the loans had required a contract for the construction to be entered into, and that Mr. E. D. Litchfield was the contractor. I knew he was the owner of nearly all the stock when I met him. I never

knew a contractor to be at the same time a contractor having an
418 interest in the construction profits, to be at the same time entrusted with the expenditure of the money by those who furnished it.

(The attention of witness is called to Exhibit 10, and he is asked if he was present at the meeting of the board of directors of the Northern Pacific when that resolution was passed; and, if so, whether he participated in the passage of the resolution?) I cannot say whether I was present or not. I was not present at all the meetings.

Q. Have you any knowledge, derived from the board of directors or officers of the First Division Company or any of them, that Mr. Moorhead was ever constituted its agent to contract in any way for the construction of the extension line of the St. Paul & Pacific?

A. I cannot say that I have examined the records and know it from that source of information, yet from the concurrent events at the time, and from the fact that it was the plan proposed by Mr. Wilmar, and that I never heard any other suggestion, I have no doubt that the officers of the First Division knew this plan as well as I did, and acquiesced in it tacitly, if not formally. My knowledge is derived from what took place at the time. I was never present, at any rate, and never examined any records of the First Division Company. I derived my knowl-
419 edge more from acts than words. I think that Mr. Becker so understood it, and so did all the others who were active in the board. I do not remember all the names. Mr. Becker was the principal one. I cannot say whether or not I had any communication with any of the other members, but I think I met them. (Exhibit 3 again shown witness.) I cannot say when I first heard of this contract. I did not know that it was to be entered into before it was entered into. I do not think I heard anything about it until very lately. What I meant by saying it was not acted under was that the road was built under another contract by DeGraff & Co.; that Mr. Moorhead did not personally undertake to build it, nor in any way except as construction agent. I cannot say when I first saw the contract with DeGraff & Co. I don't think I have ever read them fully. I don't think I was present when the contracts were let. I never went out on the road to see that they were executed. I had nothing to do with letting the contracts for the work to DeGraff & Co., I mean I had nothing to do directly, but Mr. Moorhead told me about them.

Direct examination resumed:

420 My present occupation is that of civil engineer; have been since 1836 or 1837; I have been connected with railroads entirely since about 1840 up to 1868. Since that time I have engaged partially in the manufacture of steel rails. At present I am president of the Delaware Railroad, director in the Philadelphia, Wilmington & Baltimore, in Pennsylvania Railroad, in the Northern Central, and several others.

Q. During your connection with the Northern Pacific did you know of any instance where the officers or board of directors of the First Division Company refused to comply with the instructions or wishes of the Northern Pacific?

A. I never knew of any such instance. I do not remember Mr. Wilmar's saying that he wanted some one to make a nominal contract similar to former ones. What I remember was his anxiety that Mr. Moorhead should act in a fiduciary capacity to take care of the proceeds of the bonds. Had there been any profits the railroad would have had the whole of them—every dollar.

421 NEW YORK, *April 24th*, 1875.

Present, Sam'l Dickson, e'q'r., for E. M. Lewis, trustee, and William G. Moorhead; William P. Clough, e'q'r., for DeGraff & Co.

FREDERICK BILLINGS, being duly sworn in behalf of plaintiff, says: I reside at Woodstock, Vermont. I was a director of the Northern Pacific Railroad Company in 1870 and 1871, and was personally cognizant of the transactions, which resulted in the purchase of the stock of the First Division of the St. Paul and Pacific Railroad Company, and was familiar with the provisions made for the construction of the St. Paul & Pacific Railroad Company. I knew the position occupied by Mr. Moorhead in regard to the construction of the road. He was the agent selected by the foreign parties who furnished the money and desired some person in whom they had confidence to see to the proper application and disbursement of the funds. The Northern Pacific Railroad Company owned substantially the share capital of the St. Paul & Pacific and St. Paul & Pacific First Division. The organization of each of these two latter companies was duly maintained, but questions relating to their interests were discussed in the Northern
422 Pacific board, and the policy and action of these two companies shaped by the North Pacific board. I recollect the appointment of a construction committee by the board of the Northern Pacific to take charge of the building of the road. That committee made reports from time to time as to the work, the letting of contracts, and the like, and these subjects were discussed in our board. Mr. Moorhead was the chairman of that committee. He constantly kept the board informed as to his action; reading from time to time his letters from Mr. Wilmar and Lippman, Rosenthal & Co. I know the fact that proposals were solicited by advertisement for the construction of the road, and as a Northern Pacific director I was present in the room at Minneapolis, August 7, 1871, at the time the proposals of Wallace & Co. were accepted by the board of directors of the First Division of the St. Paul & Pacific Railroad Company. Governor Smith, Judge Rice, Mr. Moorhead, General Becker, and, I think, Mr. Ogden, and some others were present. There were some bids; I dont recollect how many; and among them one from Wallace & Co., which was said by General Becker to be a bid from De Graff & Co., and I think it was dec i de dt
423 accept the bid; and I think Mr. De Graff and Colonel Crooks were called into the room and discussed the matter. General Becker was, I should say, the active man on the part of the First Division Company in that discussion. Mr. Moorhead did not assume to control or dictate. He took no more active part than the others. Governor Smith talked as much as anybody. I don't know recall positively whether there was any modification of the bid, though I think there was; and, after discussion, it was determined to accep. their bid. So far as I know, Mr. Moorhead had no personal interest in the construction of the road. I knew nothing of the agreement of May 12, 1871 (Exhibit 3), as I do not remember seeing that paper, and never heard of it until the summer of 1873. Mr. Moorhead's position, however, was simply, so far as I understood it, that of a man holding the funds to see that they were properly applied. This was to satisfy the foreign capitalists, who were negotiating the bonds. Mr. Moorhead took the position with reluctance, and, as I recollect, without compensation. He often said "I am doing this business for nothing."

Q. Can you state from your own knowledge whether Mr. Moorhead was recognized as the authorized agent of the First Division

424 Company to make the contracts and arrangements for the construction of the road?

(Objected to by Mr. Clough as immaterial.)

A. He was so considered by me, and in the Northern Pacific board he was considered as the representative of the First Division St. Paul & Pacific Railroad as well as the representative of the people on the other side, so that virtually he was the agent of all parties. The whole thing seemed to be in Mr. Moorhead, everybody having confidence in him, so that virtually the whole thing was in him. I refer to our meetings of the Northern Pacific, but General Becker was frequently here. The affairs of the First Division and of St. Paul & Pacific were frequently discussed by our board, and we assumed to give the directions. It was my understanding that they would formally execute what we directed. We were practically the owners of the property, and expected that board to put our directions in formal shape, and I supposed that they did so. If anything was to be made out of it, it would come to us as the owners of the stock, but we were chiefly interested in having the roads built as tributary to our road, and most important elements in the prosperity of the Northern Pacific Railroad. We never thought
425 it very likely that anything would be made out of the stock, at least I never did, but we wanted the road built.

Q. Please state whether it was your understanding that Mr. Moorhead was, as a contractor, to build the road in consideration of receiving the proceeds of the bonds.

(Objected to by Mr. Clough as incompetent and immaterial.)

A. It was not; on the contrary, my understanding was that he had no personal interest in it whatever. The first I ever knew of any such contract as Exhibit 3 was when I saw the papers filed in the Kennedy suit. He had not assumed, as I ever heard, any personal obligation to build the road, and had no right to receive the proceeds of the bonds except as they passed through his hands as agent. There were facts I did know inconsistent with his occupying such a position; as, for instance, his constantly reporting to the Northern Pacific board as the agent of the foreign capitalists and of the company for the work of construction. He was all the time making reports of what he was doing as agent, and never as the contractor. I never heard of him as the contractor, until I saw this paper. He was extremely anxious
426 that the road should be properly built, and that the capitalists and bondholders should be satisfied. The foreign bondholders looked to him to see the proceeds properly disbursed. When I say he was reporting to the board as the agent of the bondholders, I mean that he reported what was passing between him and them. In the board of the Northern Pacific were three or four of the directors of the First Division, so that substantially he was reporting to both boards at the same time.

No cross examination.

GEORGE W. CASS, being duly sworn, deposed and said:

Examined by Mr. DICKSON:

Q. What position did you occupy in the Northern Pacific Road in 1870 and 1871?

A. I was a director of the Northern Pacific Railroad Company during the years 1870 and 1871.

Q. Were you familiar with the arrangements as to the purchase of

the stock of the First Division—of the control of the stock of the First Division of the St. Paul & Pacific Railroad Company?

A. Well, I think I was.

Q. Please state.

A. The stock, the share capital of the St. Paul & Pacific Railroad Company, First Division, was purchased under an assurance from Mr. Wilmar, of London, England, representing Lippman, Rosenthal
427 & Co., bankers, of Amsterdam, Holland, that if their instructions and directions were closely followed they could sell an issue of $15,000,000 of bonds, secured by a mortgage to be made by the said St. Paul & Pacific Railroad Company, First Division, and also to be secured by the lands granted by Congress in aid of the construction of the road and to be received by the St. Paul & Pacific Railroad Company. On that assurance the stock was purchased of a Mr. Litchfield, then the owner of the same. The stock, however, at the time of purchase was held by George L. Becker, the president of the company, as trustee, in order that the said Becker might control the election of the board of directors and direct the entire policy of the company without reference to or consent of the actual owner of the stock. This was done that the bankers, Lippman, Rosenthal & Co., might assure the Dutch public, to whom they expected to sell the bonds, that the management of the property was practically under their control and that the money obtained for the sale of the bonds would be faithfully applied under their direction and control, so as to assure the Dutch public that the corporation should not have it in its power in any wise to divert
428 the money arising from the proceeds of the bonds to any other purpose than the construction of the road to the extent necessary therefor.

Q. What arrangements were made for the construction of the road?

A. All the arrangements looking to the construction of the road were made under the dictation of Mr. Wilmar, aforesaid, as representing Lippman, Rosenthal & Co., who were to have the sale of the bonds. They stated as one of the conditions necessary to sell the bonds that they should be able to assure the Dutch public that they had made an arrangement with a responsible party to take the money as fast as received from the sale of the bonds and apply it to the construction of the road, and to that end they should have an assurance of that kind in writing; and that the person who undertook to disburse the money and construct the road under this arrangement should be of their own appointing; and that the St. Paul & Pacific Railroad Company, First Division, and the Northern Pacific Railroad Company, who were then to be the owners of the stock purchased from Litchfield, should consent to this arrangement; and they named as the person who should have absolute control of this money for the purpose of constructing the
429 road as, I might say, a quasi-treasurer of the First Division Company, should be William G. Moorhead, of the city of Philadelphia and State of Pennsylvania. This arrangement was assented to by all the parties. As to what sort or character of a paper they required Mr. Moorhead to sign, I never knew—don't think I ever saw it, but Mr. Moorhead was considered as the agent of the St. Paul & Pacific, First Division, to construct the road, and as the agent of the bondholders or agent of Lippman, Rosenthal & Co., who claimed to represent the bonded interest, to see to the faithful disbursement of the money. The Northern Pacific Railroad Company, as the stockholders and absolute owners of the property, consented to the arrangement.

Q. Were the proceeds of these bonds to be received by the treasurer of the company and go into the treasury of the company at all?

A. The understanding was that the company should not have in any wise the control of the funds for one moment, but the funds were to be sent to Mr. Moorhead, as I might say, the quasi-treasurer of the company. I do not know that that gives a definite idea of it, but I cannot express it in any other way.

430 Q. Was Mr. Moorhead himself, according to your understanding, to be in any sense the contractor to build the road, or was he to be entitled to receive to his own use the proceeds of the bonds as remitted?

(Mr. Clough objected on the ground that it was improper and immaterial, and as conflicting with written documents.)

A. Mr. Moorhead, by his own declarations, frequently made in the presence of the directors of the Northern Pacific Railroad Company, and in the presence, I believe, of General Becker and Mr. Wilmar, was to receive no compensation whatever for his services in constructing the St. Paul & Pacific Road and disbursing the money as above recited, nor to be interested in the profits that might arise out of the construction, directly or indirectly, immediately or remotely; that he was simply acting for the interest of all the parties, to insure, at as early a day as possible, the completion of the road.

Q. Were the affairs of the St. Paul & Pacific First Division Company the subject of discussion and consideration in your board?

A. The Northern Pacific Railroad Company being the owner of the share capital of the St. Paul & Pacific Railroad Company, First Division, which had undertaken by contract to construct the so-called extension lines of the St. Paul & Pacific Railroad Company, of which

431 last-named company the Northern Pacific Railroad were also the owners of nearly all the share capital, was considered by all the parties in interest as having the right to dictate the mode and manner and time of construction to such an extent as not to conflict with the control of the money, as required by Lippman, Rosenthal & Co., to insure its honest and just application to the object intended.

Q. And were such reports made, from time to time, as involved in the question?

A. And the directors of the Northern Pacific Railroad Company, at various times, indicated their wishes in the premises, and what they indicated was usually carried out—not always, but usually. I was not at the time an officer, agent, or director, or authorized to speak for them in any particular, of the St. Paul & Pacific First Division Road. I only stood in the aspect of a stockholder, or, you may say, representing a stockholder by proxy. A majority of the directors of the St. Paul & Pacific Railroad Company, First Division, were directors as well in the Northern Pacific Railroad Company.

Q. Did Moorhead make reports from time to time, as construction agent, of what he was doing, both in reference to his dealings with the foreign bondholders, or agent of the bondholders, and in the con-

432 struction of the road?

A. Mr. Moorhead, being a director of the Northern Pacific Railroad Company, and usually attending its meetings, usually stated, at the sessions of the board, the progress of the work and the prospect of its early completion, and the great difficulties he experienced in getting money from Lippman, Rosenthal & Co. to go on with the construction, as had been agreed by their agent, Mr. Wilmar, before returning from this country to London.

Q. Was it, or was it not, understood that he was acting as the agent of the company in the construction of the road at that time?

A. As I have before stated, the St. Paul & Pacific Railroad Company, First Division, made a contract with the St. Paul & Pacific Railroad Company to construct their road, or, as they were usually termed, extension lines—one to Brainerd, on the line of the Northern Pacific Road, and the other to St. Vincent, near the boundary line between the United States and Canada, and also, after the construction of the road, to work the same for a long period of years. In order to carry out this contract, which the St. Paul and Pacific Railroad Company, First Division, had made for the construction of the road,
433 the arrangement contemplated Mr. Moorhead as their agent for that purpose, and that the funds might not go into the hands of the corporation, but into the hands of another person. Lippman, Rosenthal & Co., who were to furnish the money, also required an independent agency to act for them, who would be under their control as to the disbursement of the money, and not under the control of the corporation, whom they did not wish to intrust the money with. My impression is, and such is my belief, that in all the conversations, correspondence of every kind and character, the officers of the St. Paul & Pacific, First Division, the board of directors of the Northern Pacific Railroad Company, as representing the stock interest, and Lippman, Rosenthal & Co., who undertook to represent the bondholders' interest, as they sold the bonds, Mr. Moorhead was always termed construction agent, having no personal interest, no personal pecuniary interest, growing in any way out of the construction of the road.

Cross-examined by Mr. CLOUGH:

Q. Were you personally present at the time any arrangements were made between Mr. Wilmar and the North Pacific board for the
434 negotiation of these bonds—the fifteen million loan?

A. I was present at the meeting of the board when Mr. Wilmar came before it and made a statement in regard to the construction of the road, which I have outlined in my testimony already.

Q. Were you at that time acquainted with the previous pecuniary history of the lines of road of the St. Paul & Pacific First Division Company?

A. I was not.

Q. Did you know about the pecuniary history of the road, in a general way, of that First Divison Company?

A. Previous to what time?

Q. Previous to the purchase of the stock by the Northern Pacific Company.

A. I do not think I did, sir.

Q. Did you know of the fact that the lines of road of the First Division Company that were already built had been built by the proceeds of loans negotiated by this same firm of Lippman, Rosenthal & Co., wholly at that time?

A. I did not know it, but——

Q. You understood it, did you not?

A. I understood so from that conversation that they had sold all the bonds, and I have said so previously in my testimony.

Q. Did you know then, in a general way, or otherwise, about
435 the mode or the terms of the arrangement between Lippman, Rosenthal & Co. and the First Division Company for the negotiation of the bonds in Europe; did you know the general mode in which it was carried on?

A. I think so; that is, the $15,000,000, you mean?

Q. No; the previous loan.

A. No, sir; I knew nothing about that.

Q. Were the methods of the previous loans mentioned in the negotiation for the new loan?

A. I do not remember that they were mentioned. I remember this, they wanted to pursue the same policy in selling the fifteen millions that they had in the sale they had made in previous issues, and they even wanted the bonds in external appearance to resemble in some respects; they wished, as far as possible, to have the same trustees, and I think it was laughingly said that they would like to have the seals attached to the bonds of the same color.

Q. Was it not understood that in order to the successful negotiation of the new series of bonds—the fifteen million loan—that all the arrangements in respect to the loan and the building of the road should
436 be precisely similar to what had been in the previous loan?

A. As near as may be.

Q. As near as possible?

A. Yes, sir.

Q. Was it not distinctly stated in all of the interviews that one of the necessary conditions in the arrangements for the negotiation of the bonds was that some respo'sible party should enter into a contract with the company for the building of the lines of the road with the proceeds of the bonds?

A. It was understood that Lippman, Rosenthal & Co. should be able to say to the Dutch public that they had arranged for a responsible party who would, with the proceeds of the sale of the bonds, and as those proceeds were received, and to the extent they were received, construct the road.

Q. Were you ever present at any meeting of the board of directors of the First Division of the St. Paul & Pacific Railroad Company?

A. I am not sure that I ever was, yet I may have been.

(Witness was shown Exhibit 3, being agreement of May 12, 1871.)

Q. Did you know of the execution of that agreement at the time it was executed?

A. No, sir; I did not know it was ever formally executed.

437 Q. When did you first hear that that contract had been executed?

A. As a matter of hearing, I do not think I ever heard of it.

Q. When did you first learn that it had been executed?

A. In these printed papers; but the exact time when I read them I cannot now answer.

Q. Did you ever see any authority from the First Division of the St. Paul & Pacific Railroad Company to Mr. William G. Moorhead to act as its agent in the construction of roads?

A. I never did; any written authority, you mean?

Q. Yes; any written authority.

A. I never did.

By Mr. DICKSON:

Q. In these conversations on the part of Mr. Wilmar, in which he desired that Mr. Moorhead should see to the—become responsible for the faithful disbursement of the proceeds of the bonds, was it understood, or anything said that indicated that it was understood by him, that Mr. Moorhead was to be the contractor to actually build the road himself, and receive the money for so doing?

A. As I have already testified, the understanding in conver-
438 sation at 120 Broadway, in this city, at which were present Mr. Wilmar, Mr. Moorhead, General Becker, a majority of the board of directors of both the Northern Pacific and of the St. Paul & Pacific First Division, it was understood that Mr. Moorhead's actual position was that of agent for the companies, and that he was to take upon himself no other responsibility than that of a faithful disbursement of the money.

Q. The true position which he afterwards occupied was then fully understood by Mr. Wilmar?

A. Yes, sir.

By Mr. CLOUGH:

Q. Now, please state the date of that meeting, so we can understand it.

A. I cannot give you the exact date.

Q. Was it about the time of the negotiation of the loan?

A. It was previous to the negotiation of the loan, because this whole arrangement was necessary to be made before any loan could be made, as I have said before, and it was before the purchase of the stock, or it may have been contemporaneous, on the same day. I do not know about that.

Q. You do not know, and you have no means of knowledge, of what subsequent arrangements, if any, might have been entered into
439 between the First Division Company and Mr. Moorhead in regard to the construction of those roads, you not being a member of the company or an officer?

A. I was not a member of the board of directors. I had no means of any other information on the subject than by conversation with the several parties during the interval of time from that to this.

Q. You do not know what arrangement might have been entered into subsequent to that time?

A. No, sir; I do not.

By Mr. DICKSON:

Q. Were you cognizant of the fact that part of the proceeds of the fifteen-million loan was to be used to complete the Breckenridge line of the St. Paul & Pacific First Division?

A. That was insisted upon by Mr. Wilmar as a part, and understood by all the parties.

(Signed) G. W. CASS.

Foregoing testimony closed April 24, 1875.

440 EXHIBIT NO. 1.

(Private and confidential.—Translation.)

L. WILMAR, Esq., 3 *East India Avenue*,
Leadenhall Street, London:

AMSTERDAM, *Dec. 5th*, 1868.

DEAR SIR: According to promise, we beg to give you a series of questions, which interested persons in Amsterdam in the St. P. & P. R. R. Co. require to be answered by Mr. E. D. Litchfield before continuing their assistance to this business. In communicating this letter, will you kindly impress upon him the urgent necessity of a radical and total reform, unless he wishes to see a continuation of the present state

of stagnation, or a complete rupture of the business? For a long time past the remarks made by the principally interested parties clearly indicated the urging for a complete change, and its nature. Old established and friendly relations rendered such communication painful; however, the last incident which cased a complete stoppage of the sale of bonds prevent us from continuing silent, and we require to be able to state to our public:

1st. That our conviction is that all the proceeds of the new bonds will go towards the building and the completion of the line, under the sole control and supervision of the board of the company.

2nd. That the proceeds of the 6,000 new bonds will suffice to complete the Breckenridge line, and allow of its being immediately worked.

3rd. That all the proceeds of the Watab line, after deducting working expenses, will be remitted to us monthly, so as to meet the payment of coupons due every six months.

4th. That monthly reports are to be made out and sent to us, showing the "traffic" returns of both lines, "the proceeds of sales of land," and the progress of the work on the Breckenridge line.

5th. That Mr. Litchfield has made to us the solemn declaration that at the present moment there exists no outstanding or floating debts on either of the two lines. As several of the interested persons often manifested to us their fears that the financial management of this business was exclusively in the hands of Mr. E. B. Litchfield, without any efficient control, we are happy to hear that the share stock of both lines has been taken up by Mr. E. D. Litchfield; that the business will be conducted in a more regular way, more in accordance with other similar undertakings. And we are happy of this, notwithstanding that we are willing to admit the service which Mr. E. B. Litchfield may have rendered to the business in its infancy. The selection of such a gentleman as Mr. Geo. Becker to the high direction of the business of the company has given us great satisfaction. We were delighted to make his acquaintance; and his direct, clear, and straightforward answers, and his clear-sighted views as to the future management of the company, give us a perspective of immediate success. Mr. Trott, as treasurer and Mr. Becker's colleague, completes the new organization to our entire satisfaction; but as we have to protect the interest of the bondholders here, who purchased at our instigation, we cannot rest satisfied with half or ephemeral measures, the maintaining or cancelling of which would be at the direction of the shareholders or their representatives. The bondholders' interests are supreme, and they require full and entire protection until the repayment of the bonds. Messrs. Becker and Trott have our full confidence, and we are satisfied that neither of these gentlemen would lend the weight of their names as a guarantee for obtaining further supplies from our countrymen unless they on their part receive guarantees; that so long as they continue to manage the business of the company in accordance with the interests, respectively, of all concerned, their position cannot be repealed by the shareholders, and the bondholders' interests will continue to be represented and protected by by them. Kindly point out to Mr. Litchfield that in the present position of the business we cannot rest satisfied with half measures, and that the nomination of Messrs. Becker and Trott must be serious, final, and not subject to be cancelled by the shareholders; that is, if he wishes us to revive the market and create fresh sales at high prices. We are not sufficiently conversant with American legislature to point out the best way to attain these ends; but it appears to us by depositing all the share capital in the hands of trustees, who would be well acquainted

with the nature and importance of the engagements entered into by Mr. Litchfield, and who would be provided with all necessary powers to prevent the shareholders from exercising certain of their prior rights, contrary to the spirit of such later engagements, that this would
441 obviate all difficulties. We request you will get Mr. Litchfield's views on this subject, and also in what way he contemplates acquiring all rights on the share stock, and thus neutralize all outside influence. Mr. Litchfield's project of building the line in exchange of the bonds of the new issue appears to us to be in accordance with the interest of all concerned, providing that the new direction stipulates the price per mile, English, at so much $ nominal in bonds, and that the bonds or their proceeds are to be handed over to him as the work progresses, and after such works have been accepted by the new board. We trust that Mr. Litchfield will be able to give the works to a subcontractor, and that by doing so he may retain for himself a large profit. This subcontractor will have to conform to the orders of the new board. By these means, the irregular position held by Mr. Litchfield will not offer any impediment to the necessary control required for the construction of the works. All the new bonds must be handed to us, and the minimum price once established and agreed upon we shall realize as rapidly as the disposition of the public will allow us to do. The proceeds, converted in U. S. 5-20s, or any other security, will be held by us, and paid over to Mr. Litchfield, in the form best suited to him, and on the protection of the pay sheets duly authorized by the board.

You heard all that was said in the presence of Mr. Becker, at the meeting held in our office, and you can tell Mr. Litchfield that the guarantees mentioned herein are unanimously required; that the time for promises is past, and that facts, and positive facts only, will now satisfy us, and induce us to again apply to our Dutch public with some hope of success.

&c., &c.,

(Signed) LIPPMANN, ROSENTHAL & CO.

EXHIBIT No. 2.

3 EAST INDIA AVENUE, LEADENHALL STREET,
London, E. C., 9 *December*, 1868.

DEAR SIR: Believing that you might wish to have a copy of Mess. Lippmann's letter, I beg to send you one. If, contrary to my expectation, I fail to see you to-morrow morning, I shall do myself the pleasure of calling for Mrs. Becker and you at your hotel, at 5 o'clock, as you were kind enough to accept my quiet dinner and to spend the evening with me.

Yours, truly,

L. WILLMAR.

G. BECKER, Esq., *London*.

442 EXHIBIT No. 3.

This agreement, made and entered into this twelfth day of May, A. D. one thousand eight hundred and seventy-one, between the First Division of the St. Paul and Pacific Railroad Company, party of the first part, and William G. Moorhead, esq'r, of Philadelphia, party of the second part, witnesseth: That the party of the second part undertakes, in consideration of the agreement hereinafter mentioned to be kept and performed by the party of the first part, to build and equip, as required by

the laws of the United States and of the State of Minnesota in relation thereto, and in accordance with the profiles and plans of the chief engineer of said company, the lines of said road from Sauk Rapids to Brainerd, and from some point on the branch lines of said first party at or near the St. Cloud station to St. Vincent, all in the State of Minnesota, and equip the same with a sufficient amount of rolling stock. Said work to be prosecuted as rapidly as can be done, with money furnished therefor by the party of the first part from the sale of its issue of bond hereinafter mentioned.

In consideration of the foregoing undertaking on the part of the said party of the second part, and of the completion & equipment
443 of said lines of road in the manner hereinbefore specified, the said party of the first part agrees to pay to the party of the second part all the net proceeds of its issue of bonds, amounting to fifteen millions of dollars; such payments to be made as the work progresses, and upon the estimate of the chief engineer of the party of the first part.

In witness whereof the parties hereto have subscribed these presents, at the city of New York, on the day first above named, and the said party of the first part hath also caused its seal to be hereto attached.

[SEAL OF FIRST DIV. CO.] (Signed) GEORGE L. BECKER,
President of the First Division of the St. Paul & Pacific Railroad Company.

(Signed) WILLIAM G. MOORHEAD.

In presence of—

444 EXHIBIT No. 4.

ST. PAUL, 21*st April*, 1871.

WM. G. MOORHEAD, *Philadelphia, Pa.:*

MY DEAR SIR: This letter will be handed to you by Mess. Crooks & De Graff, the contractors for completing our main line to Red River.

When I went to Europe over two years ago I carried with me the proposition for the construction of the main line, which was accepted and embodied in the contract under which they are now at work. They desire to make to you a proposition similar in its terms for the work to be done between Watab and Brainerd, and between St. Cloud & St. Vincent. That you may become acquainted with them personally, and have an opportunity to discuss with them matters of great interest, I have taken the liberty to refer them respectfully to you. I wish to say, with reference to them, that heretofore, in all their relations to this company, they have borne themselves as faithful and honorable men; that they have fulfilled promptly and to our entire satisfaction their engagements; that we have had no difficulty or trouble with them, or with the men employed by or under them; and that they have the experience,
445 the ability, and the means necessary to enable them to do well what they undertake.

With the work which we have in hand, I consider it of prime importance to secure the co-operation of such men when we find them, for my experience is that they are rare. I have not examined with much care the contract which they have prepared. If you can arrange terms with them for the work they undertake to do, I can assure you that in all other respects you will be satisfied with these contractors. They propose to do for the new lines just what they have engaged to do on our

Breckenridge line; that is, at a specified rate or price per mile. Such a contract entered into with them, there would then remain for you to provide, under your contract with the company, for the proposed lines, the ties and rails, the chains and spikes, the station-houses, the equipment or rolling stock, the necessary fencing, the right of way, and telegraph line.

From these data you can form a very fair estimate of the cost of the completed and equipped line we have in hand. I observe that their proposed contract is with the company. If one is made it should
446 be with you as a party, instead of the company.

Again I remark that they have stipulated for free transportation over our present lines. (See seventh page of contract.)

It would not be just to present stockholders or bondholders that they should use our present lines free of cost. Such a provision might do upon the lines they build under the contract, but we cannot put at their disposal lines already built and operated by different interests, they must contract as other parties do for such transportation as they require from here to St. Cloud or Sauk Rapids. Possibly if there was to be a public letting we would secure bids under the price they name. I do not consider this certain. We should undoubtedly receive bids from parties that I would not wish to accept as contractors upon any terms. I now refer the subject to you, and, whatever the result, will do all in my power to carry out your views.

Yours, very truly,

(Signed) GEO. L. BECKER.

447 EXHIBIT No. 5.

At a meeting of the board of directors of the First Division of the St. Paul and Pacific Railroad Company, held pursuant to call by the president, at Minneapolis, Minnesota, August 7, 1871, on motion of Mr. Moorhead it was—

Resolved, that the president abandon the survey via Long Prairie, and put engineer force on line from St. Cloud via Alexandria.

Resolved, that the bid of Wallace & Co. for thirty-seven hundred and fifty dollars per mile, for the construction of the Brainerd Branch, so called, be accepted, and the president be instructed to make a contract with said parties for the immediate construction of said road, to be completed by the 1st of December, 1871; reserving, however, in said contract the right on the part of the company to suspend said work, or progress with less rapidity with the same, whenever in their judgment the interest of the company may require it, the contractor giving such security as will be satisfactory to the president for the fulfillment of the contract.

(Signed) SAMUEL S. BREED,
Secretary.

448 EXHIBIT No. 6.

At a meeting of the directors of the First Division of the St. Paul & Pacific Railroad Company, held at 120 Broadway, New York City, December 9th, 1870.

Present, L. Willmar, William G. Moorhead, E. D. Litchfield, and J. Gregory Smith. It was, on motion of Mr. Moorhead—

Resolved, that the company issue its bonds, bearing seven per cent. interest semi-annually, and payable in thirty years from the first of

January, 1871, and to secure the same by a mortgage on the road between St. Paul and Breckenridge, and all the lands, rolling stock, and equipments belonging to the same, to an amount sufficient to pay the amount required to be paid to E. D. Litchfield by virtue of a certain contract made and entered into with him on the 22d day of November, 1870, and confirmed on the 9th day of December, 1870, and for the further amount that may be necessary to equip the road and complete the same, not exceeding $3,000,000; and that the president and secretary be authorized to sign said bonds and affix the seal of the company thereto, and to execute a deed of trust and mortgage of said road and lands to Messrs. Geo. L. Becker, Horace Thompson, and William G. Moorhead, as trustees; which said deed of trust and mortgage shall be made subject to the bonds already issued by this company. Said bonds to be made payable in New York or London, at the option of the holder, at the rate of four shillings sterling to the dollar.

EXHIBIT NO. 7.

PHILADELPHIA, *October* 23, 1871.

GEORGE L. BECKER, E'q'r,
President First Division St. Paul & Pacific Railroad, St. Paul:

DEAR SIR: I cannot understand Mr. Randall's accounts. As stated when at St. Paul, I have nothing to do with these accounts. The line to Breche'ridge is to be finished by Litchfield, for which he is allowed, in addition to his original contract, the amount estimated at the time of purchase by the Northern Pacific Railroad Company, of which you have a copy. All expenditures of new lines must be charged to them separately. I suggest thus:

1. Brainerd branch;
449 2. First Division Pembina line, extending to crossing of Northern Pacific Railroad;
3. Second Division Pembina line, from said crossing to Pembina; which three accounts would correspond with the three several contracts.

I, individually, am entitled to no credits, and certainly will not consent to any debits. My position is simply that of chairman of a committee of the board of Northern Pacific Railroad Company having this matter in charge.

The contract with me is merely nominal, and is so stated by a resolution entered on the books of the Northern Pacific Railroad Company. I have no interest in profits, and will bear no losses in connection with this business. I simply act as chairman of a committee appointed by Northern Pacific Railroad Company, and at the same time by request of the Amsterdam people to guard their interest. The contract is mere form. The engineering expenses in Missouri should be charged to the Northern Pacific Railroad Company direct; they were ordered by the president. Mr. Randall must understand my position, and keep
450 the accounts so that we can settle with Mr. Litchfield. The drafts I was authorized to draw on Wilmar were for the Breckenridge road, and the payment of Litchfield, notes, &c. You can explain these transactions to Mr. R. I have not a single charge against the St. Paul and Pacific Railroad, except for some office expenses, stamps, &c. I fear your books are not clear on these subjects. It is important they should be before Mr. Litchfield comes on to make final settlement.

In view of the foregoing you will please have the account transferred from my name to those as suggested above.

Yours, very truly,
(Signed) WM. G. MOORHEAD.

EXHIBIT No. 8.

ST. PAUL, *October* 28, 1871.

WM. G. MOORHEAD Esq., *Philadelphia:*

MY DEAR SIR: Replying to your favor of the 23d inst., with reference to the statement of your account here as kept by Mr. Randall, I beg leave to call your attention to the enclosed explanation addressed to me by Mr. R.

451 You will understand that the accounts were kept in your name for convenience only. It is as much a matter of form as is the contract to which you refer. Somebody must stand upon our books as the representative of the new lines, and it was natural that we should use your name, not with any idea of fixing any responsibility upon you. If you prefer to have my name held as the figure-head, there is no objection, or any name that you may suggest.

I notice what you say about engineering expenses of running line to Missouri. Will make out bill and send to Governor Smith.

You will please note Mr. R.'s inquiry with reference to the money used here for the payment of condemned property on the levee. I had supposed that this money would come out of the proceeds of the new loan ultimately, and when I asked you to make good the balance of the account standing in your name, I had no idea of calling upon you individually, but hoped that it might come from remittances that would be made from Europe.

I desire to get those matters stated correctly, and will thank you for full instructions. As we have been at considerable expense for

452 engineering on the Missouri reconnoisance, on the St. Cloud and St. Vincent line, and on the Brainerd branch, which had to be met month by month, the moneys coming from no other source, I have paid them with company funds, expecting, of course, to be reimbursed in due time.

Yours truly,

(Signed) GEO. L. BECKER.

EXHIBIT No. 9.

GEORGE L. BECKER, *President.* SAMUEL S. BREED, *Secretary.*

[First Division St. Paul & Pacific Railroad Company.]

GENERAL OFFICE,
St. Paul, October 27, 1871.

Mr. GEORGE L. BECKER, *President:*

SIR: In reply to Mr. Moorhead's letter of October 23d, I would say:

First. That accounts on new construction, that is to say, from St. Cloud to Brainerd and Pembina, are not entered upon the books of the company; but a new set of books have been opened, thus keeping all new construction entirely clear from the operation accounts of the company.

The books have been opened in name of W. G. Moorhead, con-

453 tractor. This is also a form. It does not make him responsible for any debts, neither is it intended to give him any profits; but, as I understand it, all the money necessary for the work here realized from the sale of the company's bonds issued for the construction of the Brainerd and Pembina lines come through him; it would be necessary to have an account in his name, by which we could credit him with the proceeds of said drafts.

Second. The returns made me from the chief engineer's department up to this time made no division of the accounts, and consequently all expenses up to the present show in the gross, covering all the lines. The divisions as stated by Mr. Moorhead, thus:

"Brainerd branch; First Division, Pembina line; Second Division, Pembina line," will be made.

The credit of £20,000, or $107,000, was made and left to Mr. Moorhead's account, waiting for instructions. The change will now be made. There will remain a balance due Mr. Litchfield from the Pembina and Brainerd accounts. Having thus $40,000 of the proceeds of the
454 draft on Mr. Wilmar for the settlement of the condemned property at the St. Paul levee, who will settle for it. Shall it be credited to Mr. Litchfield, or will Mr. Moorhead make provision for it?

I can straighten out the transactions connected with the Brainerd and Pembina lines up to this time without very much trouble, but the work is growing rapidly, and soon will get beyond control. So it is absolutely imperative, if the accounts connected with the construction of the Brainerd and Pembina lines are to be kept in this office, that we have full instructions of what is required of us in the keeping of the said accounts. If duplicate vouchers, &c., are necessary we should know it at once.

Respectfully yours,

J. H. RANDALL,
Chief Clerk.

EXHIBIT No. 10.

The board of directors of the Northern Pacific Company held a meeting on February 15, 1871, at which the following resolutions were unanimously adopted:

Whereas the Northern Pacific Railroad Company is the owner
455 of a majority of the stock of the First Division of the St. Paul and Pacific Railroad Company, and practically the owner of the property;

And whereas it becomes necessary, in carrying out our arrangement with the agents for the sale of bonds of the First Division of the St. Paul & Pacific Railroad Company in Europe, that a contract should be made with some individual for the construction of the road of the St. Paul & Pacific Railroad from Sauk Rapids to St. Vincent: Therefore,

Resolved, that this board recommends and assents to the First Division of the St. Paul & Pacific Railroad Company contracting with William G. Moorhead for the construction of said road, and that the president be directed to take a declaration of trust from said Moorhead, and by proper instrument to indemnify said Moorhead from all risk and damage by reason of entering into said contract.

At another meeting of the board of the same company, held on May 10, 1871, at the city of New York, the following further resolutions were adopted:

Whereas this corporation is practically the owner of the St. Paul & Pacific First Division Railroads, and their properties and estates,
456 through an ownership of the share capital of those companies, and with a view to protect and promote this interest, therefore,

Resolved, that there be appointed a committee of three who shall take entire charge of the construction of said roads, and bring them into working use at the earliest day practicable consistent with reasonable economy.

Resolved, that said committee be empowered to carry forward and perfect negotiations for the delivery and sale of the bonds of the St. Paul & Pacific Railroad Company, and to apply the proceeds of such sale to the construction of the roads according to existing agreement, and shall report their proceedings monthly to this board.

Resolved, that as Wm. G. Moorhead holds in trust for this company the contract for constructing the St. Paul & Pacific First Division, he shall be chairman of said committee, and that he be authorized to employ a competent clerk to the committee.

EXHIBIT No. 11.

ST. PAUL, *September 12th*, 1872.

WILLIAM G. MOORHEAD,
Construction Agent:

As it is absolutely necessary to meet the June, July, and Au-
457 gust estimates for construction account of our St. Vincent line, amounting, in connection with freight and duties, to about $500,000, more or less, you are hereby authorized and empowered to borrow the same, or as much thereof as may be necessary, on such terms as to you seem best, by hypothecating the iron rails in New York, or that may arrive there consigned to you as construction agent.

It is understood that you are acting in this matter as the friendly agent of all parties interested, and that in no respect will you be held to any personal liability whatsoever.

Yours, truly,

[SEAL OF COMPANY.] (Signed) GEORGE L. BECKER,
President of the First Division of the St. Paul & Pacific Railroad Company.

Attest:
SAMTEL S. BREED, *Secretary.*

EXHIBIT No. 12.

Copy of resolution of the First Division St. Paul & Pacific Railroad Company authorizing hypothecation and sale of iron.

458 Resolved, that William G. Mcorhead, construction agent, be, and hereby is, authorized to pledge, hypothecate, sell, or dispose of the iron rails of this company now in New York or elsewhere, or hereafter to arrive, for such sums and upon such terms as are in his judgment best for the interest of this company, for the purpose of raising the money necessary to meet past and future estimates for construction account St. Vincent and Brainerd extensions, and for duties, freight, and advances for same account.

The foregoing is a true copy of a resolution passed by the board of directors of the First Division St. Paul & Pacific Railroad Company, at a meeting held in Chicago September 17, 1872.

[OFFICIAL SEAL.] (Signed) GEORGE L. BECKER,
President.

Attest:
SAMUEL S. BREED,
Secretary.

Exhibit No. 13.

At a meeting of the board of directors of the First Division of the St. Paul & Pacific R. R. Co., held pursuant to call at 120 Broadway, New York, Wednesday, May 10th, 1871, the president exhibited to the
459 board a draft of contract with Wm. G. Moorhead, e'q'r, for the construction of lines, which, on motion, was approved, and the president and secretary directed to execute the same.

Exhibit No. 14.

This memorandum of agreement, made and entered into this 15th day of December, in the year of our Lord one thousand eight hundred and sixty-eight, by and between George L. Becker, president of the First Division of the St. Paul & Pacific Railroad Company, on behalf of and representing said company, party of the first part, and E. Darwin Litchfield, esquire, now of London, England, party of the second part, witnesseth: That the party of the second part undertakes, for and in consideration of the agreement hereinafter contained, to be kept and performed by the party of the first part, to build and equip, as required by the laws of the United States and the State of Minnesota, and in accordance with the profiles thereof as prepared by the chief engineer of said company, the line of railroad from St. Anthony, via Minneapolis, to Breckenridge, on the Red River of the North, in the State of
460 Minnesota; said road to be built & completed, and furnished with the rolling-stock specified in the schedule hereto annexed, as follows: Sixty miles from St. Anthony, west, to be finished by July 1, 1869, and such portion of the rolling-stock provided as may be required by the party of the first part; ninety miles additional, being one hundred and fifty miles from St. Anthony, on or before the first day of January, 1870, with such portion of said rolling stock as the party of the first part may consider necessary; and the balance of said railroad to Breckenridge, sixty miles, with the remaining part of said rolling-stock, by the first day of January, 1871; said road to be built, and said equipments, to be furnished, to the satisfaction and under the direction of the party of the first part, and subject to the approval and acceptance of the board of directors of said party of the first part.

And the said party of the second part further agrees to pay all the interest which may accrue on the bonded indebtedness of the party of the first part, so far as such indebtedness relates to the line of railway hereinbefore specified, until the completion of said line of railroad, at the times and places when and where such interest may become due according to the tenor and intent of said bonds.

461 In consideration of the foregoing undertaking on the part of said party of the second part, and of the completion and equipment of said line of road in the manner and within the times hereinbefore specified, the said party of the first part agrees to pay to the party of the second part its bonds and stocks, as follows, to wit: On the completion of the first sixty miles of road, the whole of its first issue of real estate bonds, amounting to three millions of dollars, and of its second issue of bonds, known as the six-million loan, bonds at the rate of twenty-five thousand per mile of completed road, and one million of dollars in the shares of the capital stock of said company; on the completion of ninety additional miles of said road, being 150 miles from St. Anthony, of the second issue of bonds, being a part of the six-million loan, at the rate of thirty-three thousand three hundred and $\frac{33}{100}$ per

mile, being three millions of dollars of said bonds, and two millions of dollars of the capital stock of said company; and on the final completion of said road, sixty miles additional, and its acceptance by said
462 company, with the rolling-stock thereon, one million five hundred thousand dollars of said second issue of bonds, at the rate of twenty-five thousand dollars per mile, and one million five hundred thousand dollars of its shares of capital stock; making in all nine millions of dollars in bonds and four millions five hundred thousand dollars of its shares of capital stock.

And the said party of the first part further agrees to devote the net receipts of said line of railway, and of the land department of said company, to aid in the payment of interest, and so long as such interest may be paid by said party of the second part, and so far as it may lawfully do the same without violating the provisions of its trust deeds heretofore executed.

Which payments as above specified shall be in full for all work done, materials furnished, and money advanced for and on account of the construction of said line of railroad and the equipment thereof, and for the payment of interest as hereinbefore provided.

It is mutually understood by and between the parties hereto that the bonds hereinbefore referred to are all to be placed in the custody
463 of Lippman, Rosenthal & Co., bankers, in Amsterdam, Holland, for negotiation and sale, and that as the work proceeds and materials furnished, the party *the* of the second part may require estimates to be furnished by the chief engineer of said company for work so done and materials so furnished under this contract, and that such estimates shall be paid by the party of the first part in orders on said bankers for the proceeds of such part of said bonds as said estimates show he may be entitled to by virtue of this agreement; and the making and delivery of such orders shall, to the extent of their respective amounts, constitute a payment under this agreement.

It is understood and agreed between the parties hereto that this memorandum is to be submitted to the board of directors of said company at St. Paul for its approval, and if its provisions are satisfied and approved, that a full and formal contract in accordance herewith shall be drawn and executed by the parties hereto, which contract shall take the place of this memorandum.

In witness whereof the parties hereto have subscribed their names at the city of London, on the day and year above mentioned.

GEORGE L. BECKER,
464 *President of the First Division of the St. Paul and Pacific Railroad Company.*
E. D. LITCHFIELD.

EXHIBIT No. 15.

PRESIDENT'S OFFICE.
FIRST DIVISION ST. PAUL & PACIFIC R. R. CO.,
St. Paul, May 22d, 1871.

Proposals will be received at this office until the 10th day of June next, at 12 o'clock noon, for the graduation, mechanical structures, ties, track-laying, and ballasting of that portion of the branch line of this company extending from Sauk Rapids to Brainerd, a point of junction of the Northern Pacific Railroad. Bids will be received for the whole or any part thereof. The work to be completed in 90 days. The right is

reserved to reject any or all bids, if not considered for the best interest of the company.

GEORGE L. BECKER,
President.

EXHIBIT No. 16.

OCT. 25, 1871—Order to pay coupons of the 3,000 bonds, issue of March, 1864, due Nov. 1, 1871.

Am't chg. by L. R. & Co. under this order, £20,671.

465 OCT. 25, 1871.—Order to pay coupons due May 1st, same issue. No return of any sum paid under this order.

OCT. 25, 1871.—Order to pay coupons due June 1st, 1871, on $2,800,000, issue dated Sept. 1, 1865.

Am't chg. by L. R. & Co., under this order, £7,892.00.

OCT. 25, 1871.—Order to pay coupons due Dec. 1, 1871, on same issue.

Am't chg. by L. R. & Co. under this order, £8,001.

16 MARCH, 1872.—Order to pay coupons due May 1, 1872, on $6,000,000, issue of July 1, 1868.

Am't chg. by L. R. & Co. under this order, £42,000.

28 MARCH, 1872.—Order to pay coupons due May 1, 1872, on $3,000,000, issue of March 1, 1864.

Am't chg. by L. R. & Co. under this order, £20,671.

MARCH 28, 1872.—Order to pay coupons due June 1, 1872, on $2,800,000, issue of Sept. 1, 1865.

Am't chg. by L. R. & Co. under this order, £7,892.10.

Same date, same issue, coupons due Dec. 1, 1872.

Am't chg. under this order by L. R. & Co., £7,892.10.

MARCH 28, 1872.—Order to pay coupons due Nov. 1, 1872, on $3,000,000, issue of March 1, 1864.

466 Am't chg. by L. R. & Co. under this order, £20,671.

JULY 26, 1872.—Order to pay coupons due Nov. 1, 1872, on $6.000,000, issue of July 1, 1868.

No return from L. R. & Co. under this order.

EXHIBIT No. 17.

AMSTERDAM, 19*th May*, 1871.

To the First Division of the St. Paul and Pacific Company, St. Paul, Minnesota:

GENTLEMEN: We have the honor to acknowledge the receipt of your communication under date of April 19, 1871, signed by your president and trustee, Mr. George L. Becker and Wm. G. Moorhead, and sealed and attested by the secretary, Mr. Sam'l S. Breed, with reference to the fifteen thousand (15,000) bonds of one thousand ($1,000) dollars each to be issued for the construction of the St. Vincent and Brainerd extensions, and regulating the conditions of sale of these bonds, exclusively entrusted to us, and wherein you propose to pay us a commission of three (3) per cent. on the nominal amount of the bonds sold, and two per cent. on the amount realized. This emission of bonds will be

467 made at the minimum price of seventy (70) per cent., and you agree that the sum of forty (£40) pounds on each thousand ($1,000) dollar bond sold shall be converted by us into United States bonds to provide for the payment of coupons on bonds so sold, and you also agree to us retaining from the proceeds of the sales the English and Dutch stamp

duties, as the bonds make mention that the duty imposed by the United States Government shall be paid by the company.

We have to observe that the payment of the coupons of November first next will absorb the guarantee fund of the bonds of 1868, issued in 1869; the authority given to us by the company to deduct from the proceeds of the sale of the fifteen thousand (15,000) bonds above mentioned to be issued the amount subscribed to pay the coupons of the other issues when due, must be extended to the said six thousand (6,000) bonds issued in 1868–1869, and for the sake of regularity we await an authority in due form to that effect.

It is further understood that the company allow us one-fifth ($\frac{1}{5}$) florin, Dutch currency, f. o. 20, per £ sterling, upon all our remittances to London, as compensation for loss of exchange between Amsterdam
468 and London.

Per contra, we undertake, from time to time, advances to the company of from forty to eighty thousand (£40,000 to £80,000) pounds sterling in the event of the bonds not finding as rapid a sale as the construction wants necessitates, and provided bonds in our hands amply cover such advances.

Upon such eventful advances it is understood that we shall be allowed to charge the commission formerly agreed to of two (2) per cent. per three (3) months, which commission includes the interest on our advances, as we have no interest account at all with the company.

We are, gentlemen, yours, very truly,

(Signed) LIPPMAN, ROSENTHAL & CO.

ST. PAUL, 13*th May*, 1872.

Messrs. LIPPMAN, ROSENTHAL & Co., *Amsterdam*:

DEAR SIRS: As president of this company I hereby agree to the following terms and conditions touching the sale of our issue of fifteen thousand bonds, of one thousand dollars each, issued by us for the purpose of securing the constructing of the St. Vincent and Brainerd ex-
469 tensions of our road, as suggested in your letter of May 19, 1871, to wit:

1st. That this emission of bonds shall be made at the minimum price of seventy (70) per cent.

2nd. We agree that the sum of forty pounds (£40) in each one thousand dollar ($1,000) bond shall be converted by you into United States bonds to provide for the payment of coupons of bonds so sold, and we also agree to your retaining from the proceeds of the sales the English and Dutch stamp duties.

3rd. We authorize you to deduct from the proceeds of the sale of the fifteen thousand (1,000) bonds above mentioned an amount wherewith to pay coupons of the issue of the six thousand bonds of this company of 1868.

4th. We allow you one-fifth ($\frac{1}{5}$) florin, Dutch currency, $0.40, per pound sterling upon all remittances to London, as compensation for loss of exchange between Amsterdam and London. It is understood from the terms of your letter hereinbefore referred to that you undertake to make, from time to time, advances to this company of from forty to eighty thousand (40,000 to 80,000) pounds sterling in the event of the bonds not finding as rapid a sale as the construction wants necessitates, we placing in your hands bonds to cover such advances amply.

470 Upon such advances it is understood and agreed that you may

charge the commission of two (2) per cent. for three (3) months, which commission includes the interest on your advances.

Very respectfully, yours,

GEO. L. BECKER,
President of the First Division of the St. Paul and Pacific Railroad Company.

EXHIBIT No. 18.

PHILADELPHIA, *October* 20, 1871.

Messrs. DE GRAFF & Co.:

GENTLEMEN: I telegraphed you the 18th inst., "Don't commence work on either Brainerd or Pembina line for the present." You answered, "Brainerd line all under contract and will be finished next month; also started on Pembina line; will go slow." I regret that you commenced, as no funds have been provided from sale of bonds, nor will there be, I fear, for some months to come. The Breckenridge line must be completed and paid for before anything can be obtained for construction of new lines. I trust all will come out right after a little time; but I cannot promise payment faster than the Amsterdam bankers will
471 provide means. I wish this distinctly understood. I am merely acting as "construction agent," and will not assume responsibilities in regard to payments. I asked for $2,000,000 to continue operations until April, which they did not object to, and now say that after a couple of months they doubt not funds will be provided. I don't know these people personally, and am not willing to risk promises. I wish to see the cash before promising prompt payment myself. You and Mr. Becker have had to do with this business, and can judge what course to adopt. I appreciate the importance of progressing with the work, but still more do I appreciate the necessity of having the cash for the purpose.

Respectfully yours,

(Signed) WILLIAM G. MOORHEAD.

EXHIBIT No. 19.

DE GRAFF & Co.:

Push your work with all possible dispatch. Get out timber for bridges.

WILLIAM G. MOORHEAD.

472 EXHIBIT No. 20.

Know all men by these presents, that the First Division of the St. Paul & Pacific Railroad Company, by William G. Moorhead, esq., of Philadelphia, Pennsylvania, construction agent, duly constituted, empowered, and authorized by the board of directors of said company, a true copy of which power and authority, and attested by the said William G. Moorhead, is hereto attached, in consideration of the sum of two hundred and two thousand five hundred dollars ($202,500) to me in hand paid by De Graff & Co., of Saint Paul, Minn., per ⅔ of the said the First Division of the St. Paul & Pacific Railroad Company, at and before the ensealing and delivery of these presents, the receipt whereof I do hereby acknowledge, have bargained, sold, released, granted, & confirmed, and by these presents do bargain, sell, release, grant, & confirm, unto the said De Graff & Co., all the iron rails mentioned in the following schedule now remaining north of Glynden, at or near the Pembina line

of the said company's railroad, at Glynden and at Duluth in the State of Minnesota, and to arrive at Duluth; to have and to hold all and singular the said iron rails and every of them by these presents
473 bargained, sold, released, granted, & confirmed unto the said De Graff & Co., to their only proper use and behoof, their heirs, executors, administrators, and assigns, forever.

In witness whereof the said First Division of the St. Paul & Pacific Railroad Company, by Wm. G. Moorhead, construction agent, has hereunto set his hand & seal, this eleventh day of November, A. D. 1872.

WM. G. MOORHEAD,
Construction Agent, First Division
St. Paul & Pacific Railroad Company.

Sealed & delivered in presence of—
A. B. NETTLETON,
JAY COOKE.

Schedule of the iron rails mentioned in the foregoing bill of sale, to wit:

1,700 tons at Glynden & north, in Minnesota.
1,000 tons at Duluth, in Minnesota.

Copy of resolution of the First Division of the St. Paul & Pacific Railroad Company authorizing Wm. G. Moorhead, construction agent, to pledge, hypothecate, sell, or dispose of the iron rails of said company.

Resolved, that William G. Moorhead, construction agent, be, and he is hereby, authorized to pledge, hypothecate, sell, or dispose of the iron rails of this company now in New York or elsewhere, or hereafter
474 to arrive, for such sums and upon such terms as are in his judgment best for the interest of this company, for the purpose of raising the money necessary to meet past and future estimates for construction account St. Vincent & Brainerd extensions, and for duties, freights, & advances for same account.

The foregoing is a true copy of a resolution passed by the board of directors of the First Division of the St. Paul & Pacific Railroad Company at a meeting held in Chicago September 17th, 1872.

[COMPANY'S SEAL.] GEO. L. BECKER, *Pres't.*

Attest:
SAM'L S. BREED, *Secretary.*

EXHIBIT No. 21.

DULUTH, MINN., *December* 27, 1872.

Whereas William G. Moorhead, esq., of Philadelphia, construction agent of the First Division of the St. Paul & Pacific Railroad Company, by bill of sale duly executed and delivered to us, has sold to us one thousand seven hundred tons of railroad iron, now lying at Glyndon and north of that point, also one thousand tons now lying in bond at Duluth, in all two thousand seven hundred tons, at seventy-five
475 dollars per ton, amounting to two hundred and two thousand five hundred dollars ($202,500), the same to be applied on estimate for work and materials due and owing to us as contractors. Now we hereby agree and covenant to hold the same for a period of five months, and at any time within that period or at its expiration to sell the same

to the said St. Paul & Pacific Railroad, if required by said road, at the above-mentioned price of seventy-five dollars per ton, and interest at the rate of seven per cent. per annum from this date.

(Signed) DE GRAFF & CO.,
Contractors.

Witness:
EDWARD ELDRIDGE.

EXHIBIT No. 22.

This article of agreement, made this second day of October, in the year one thousand eight hundred and seventy-one, by and between C. A. De Graff, William Crooks, and Nicholas De Graff, partners doing business under the firm name of De Graff & Co., of the city of St. Paul, Minnesota, party of the first part, and William G. Moorhead, construction agent, party of the second part, witnesseth: That the party
476 of the first part, for and in consideration of covenants, agreements, and stipulations of said party of the second part, as hereinafter mentioned, promises and agrees to execute, construct, and finish in every respect, in a substantial and workmanlike manner, and to the satisfaction of the party of the second part, or the chief engineer, all the grubbing and clearing for a width of fifty feet on each side of the centre line, all grading, bridges, and culverts, track-laying, surfacing, and ties, for a single-track railroad of that portion of the line of the St. Paul & Pacific Railroad included between Sauk Rapids Village and Brainerd, a portion of the Northern Pacific Railroad at its crossing of the Mississippi River, a distance of sixty-one (61) miles, more or less. Said party of the first part agrees to complete the same on or before the first day of June, in the year one thousand eight hundred and seventy-two; said party of the first part agrees also not to assign this contract without the consent of the party of the second part.

It is mutually understood and agreed that the roadway shall be so graded that at subgrade all embankments shall be twelve feet
477 wide, and all *and all* excavations shall be sixteen (16) feet wide, with necessary ditches in the excavations; ties, to the number of twenty-five hundred to the mile, to be of white, red, or black oak, tamarack, red or rock elm, Norway or black pine, ash, or hackberry, all to be eight (8) feet long, six (6) inches thick, and not less than six (6) inches face. If, during the progress of the work, rock should be found in the excavation, then the same is to be paid for as extra work, and at such price per cubic yard as the party of the second part may fix upon. It is mutually understood that the theory of construction for this roadway shall be an embankment wherever possible of not more than two feet in height, with a berme of three feet on either side, and the material for the embankment furnished from the ditches, which are to be evenly and exactly made, with an inside slope of one and one-half horizontal to one vertical. The bridges and culverts to be of such design as the party of the second part approve, and are to be of wood, with pile foundations; should stone be substituted, then the same shall be estimated and paid for as extra, and at such price per cubic yard as the party of the second
478 part or the chief engineer thereof may fix and determine. The surfacing shall consist in raising the track sufficiently above subgrade, with material taken from the sides, as shall be necessary to give good and even grades and joints and secure proper drainage to the roadway. When it is necessary to haul material for the purpose of surfacing the roadway, then the party of the second part will pay the dif-

ference between carting and hauling as extra work, the party of the second part or the engineer before named to settle the price. It is mutually agreed and understood that the party of the first part will commence said work of construction whenever notified to do so by the party of the second part, and be governed in the prosecution thereof as to time and manner, subject to the stipulations of this contract, by the party of the second part or by the chief engineer before named. It is mutually understood and agreed between said parties that to prevent disputes or misunderstandings between them in relation to any of the stipulations contained in this agreement or their performance by either of said parties, that the chief engineer of the party of the second part shall be, and hereby is, made an umpire to decide all matters aris-
479 ing or growing out of this contract between them, and his decision shall be final. It is mutually agreed and understood that whenever, in the opinion of the party of the second part, it is necessary to stop any of the work or diminish the force employed, said party of the second part, by a notice in writing handed to the said party of the first part thirty days in advance, shall have the right to do so, and the party of the first part shall have no claim for damages, but shall stop the work or reduce the force as the party of the second part shall direct; provided that upon the resumption of the work, the party of the first part shall have the right of resuming and completing said work within such time as may, on such resumption of work, be mutually agreed upon, and subject in all respects to the conditions and agreements mentioned in this contract, save only the time specified in for completing the same. It is further mutually understood and agreed that the party of the second part shall furnish to the party of the first part, for use in the prosecution of the work hereby contracted for, such motive power and cars as may be necessary, free of any charge, it being under-
480 stood, however, that the wages of the engineer and fireman shall be defrayed by the party of the first part during the time they are so employed. And it is further mutually agreed and understood that the party of the second part will furnish to the party of the first part free transportation for all men, material, stock, and supplies to and from St. Paul & Minneapolis and the end of the branch line of the St. Paul and Pacific Railroad Company; estimates of the work done and materials furnished are to be made on the first day of each and every month during the life of this contract, by the chief engineer of the party of the second part, or by his assistant, and payments therefor are to be made on the fifteenth day of each month. It is understood that the party of the second part will furnish to the party of the first part, at Brainerd, all the iron rails, splices, bolts and spikes, frogs and switches, at such time or times as may be necessary, and no forfeiture of this contract shall ensue from the refusal or inability of the party of the second part to furnish the material, motive power, or rolling stock as may be necessary and hereinbefore mentioned. It is further mutually agreed and understood that whenever each and every thirty consecutive
481 miles shall be completed to the satisfaction of the party of the second part, or the chief engineer thereof, he shall inspect and accept the same as completed. It is understood and agreed that all side tracts are to be constructed when ordered, and paid for by the mile, at the same rate and in the same manner as paid for the main line. Piles to be of oak, elm, pine, or tamarack, to be well driven, under the order of the party of the second part as to place and manner. It is further mutually agreed and understood between the parties hereto that as a guarantee for the faithful fulfillment of this contract, the party

of the second part shall have the right to retain ten per centum of each and every estimate made by said chief engineer on said work performed, or materials furnished, until the percentage so retained shall amount to twenty thousand dollars; and when the work shall have been entirely completed to the satisfaction of the party of the second part, or the chief engineer thereof, he shall furnish a certificate to that effect to the party of the first part and to the party of the second part, when the percentage so retained, and all other moneys
482 due, shall be paid to the party of the first part. It is further agreed and understood that in case of any suspension or stoppage for a longer period than ninety days, it shall be the duty of said chief engineer to measure all the work done and materials furnished and make a return of the same to the party of the second part, when the amount so due for work done and materials furnished, together with all percentage retained at that time, shall be paid to the party of the first part. And it is further understood and agreed that in consideration of the fulfillment and performance in good faith of all the stipulations contained in this contract by the said party of the first part to be fulfilled and performed, the party of the second part shall pay to the party of the first part, in lawful money of the United States of America, the sum of three thousand seven hundred and fifty dollars ($3,750) for each and every mile so constructed.

In witness whereof the parties hereto have subscribed their names and affixed their seals the day and year first written.

C. A. DE GRAFF. [SEAL.]
WM. CROOKS. [SEAL.]
NICHOLAS DE GRAFF. [SEAL.]

Signed, sealed, and delivered by C. A. De Graff, William Crooks,
483 and Nicholas De Graff, in presence of—
H. SAHLGAARD,
B. W. LOTT.

WM. G. MOORHEAD, [SEAL.]
Construction Agent.

Signed, sealed, & delivered in presence of—
JNO. W. SEXTON,
GEORGE E. BENT.

[Ten cents internal revenue stamps.]

EXHIBIT No. 23.

This article of agreement, made this fifth day of October, in the year one thousand eight hundred and seventy-one, by and between C. A. De Graff, William Crooks, and Nicholas De Graff, partners, doing business under the firm name of De Graff & Co., of the city of St. Paul, Minnesota, party of the first part, and William G. Moorhead, construction agent of the St. Paul & Pacific Railroad, First Division, party of the second part, witnesseth:

SECTION 1. That the party of the first part, for and in consideration of covenants, agreements, and stipulations of the party of the second part, as hereinafter mentioned, promises and agrees to furnish
484 material, execute, construct, and finish in every respect in a substantial and workmanlike manner, and to the satisfaction of the party of the second part, or the chief engineer thereof, that portion of the line of the St. Paul and Pacific Railroad commencing at the west end of the bridge spanning the Mississippi River to be located at or

near St. Cloud, and terminative at a point one hundred and thirty miles, or thereabout, from such point of beginning, being at the crossing of the Northern Pacific Railroad.

SEC. 2. Said party of the first part agrees to do all the grubbing and clearing for a space of fifty feet on each side of the centre line, all grading, furnish material, and build all bridges, culverts, and sluices, furnish all ties, lay track and surface the same in a thorough manner, with banks twelve feet in width and cuts sixteen feet in width at base, as follows, viz: For grubbing and clearing as above, three hundred dollars per mile; grading, per cubic yard, thirty-six cents; limit of haul one thousand feet, beyond which, at the estimate of the said engineer before named; ties, per tie in track, forty cents each; piles, per lineal foot driven, forty cents each; timber in structures, per thousand
485 feet, board measure, thirty-three dollars; cast-iron, per pound, six (6) cents; wrought iron, per pound, eight (8) cents; tracklaying, per mile, including surfacing of track, five hundred dollars ($500). Howe truss bridges as follows, viz: One hundred feet span, per lineal foot, twenty-six dollars ($26); one hundred and twenty-five (125) feet span, per lineal foot, thirty-one dollars ($31); one hundred and fifty (150) feet span, per lineal foot, thirty-four ($34); one hundred and seventy (170) feet span, per lineal foot, thirty-eight ($38); two hundred feet span, per lineal foot, forty-four dollars ($44.)

SEC. 3. Said party of the first part agrees to complete the same on or before the first day of March, in the year one thousand eight hundred and seventy-three. Said party of the first part also agrees not to assign this contract without the consent of the party of the second part.

SEC. 4. It is further mutually agreed and understood that the roadway shall be so graded that at subgrade all embankments shall
486 be twelve (12) feet wide, and all excavations shall be sixteen (16) feet wide at base, with necessary ditches in the excavation; ties, to the number of twenty-five hundred to the mile, to be of red, white, or black oak, tamarack, red or rock elm, Norway or black pine, ash, or hackberry; all to be eight (8) feet long, six inches thick, and not less than six inches face. If during the progress of the work rock should be found in the excavations, then the same is to be paid for as extra work, and at such price per cubic yard as the party of the second part may fix upon.

SEC. 5. The bridges and culverts to be of such design as the party of the second part may approve, and to be of wood, with pile foundations. Should stone-work be substituted, then the same shall be estimated and paid for as extra, and at such price per cubic yard as the party of the second part, or chief engineer thereof, may fix and determine. The surfacing shall consist in raising the track sufficiently above subgrade, with material taken from the sides, as shall be necessary to give good and even grades and joints, and secure proper drainage to the roadway.

487 SEC. 6. It is mutually agreed and understood that the party of the first part will commence said work of construction whenever notified to do so by the party of the second part, and be governed in the prosecution thereof as to time and manner, subject to the stipulations of this contract, by the party of the second part, or the engineer before named.

SEC. 7. It is mutually agreed and understood between the parties that to prevent disputes or misunderstandings between them in relation to any of the stipulations contained in this agreement, or their performance by either of said parties, that the chief engineer of the party of

the second part shall be, and he hereby is, made an umpire to decide all matters arising or growing out of this contract between them, and his decision shall be final.

SEC. 8. It is further mutually understood and agreed that the party of the second part shall furnish to the party of the first part, for use in the prosecution of the work hereby contracted for, such motive power and cars as may be necessary, free of charge; it being understood,
488 however, that the wages of the engineer and fireman shall be defrayed by the party of the first part during the time they are so employed.

SEC. 10. And it is further mutually agreed and understood that the party of the second part will furnish to the party of the first part free transportation for all men and materials, stock and supplies, over its several lines, as the contractors may need in the prosecution of their work; the company to load and deliver all iron rails, splices, bolts, frogs, and switches as the same may be required, at the end of the track, free of cost to the contractors; and no forfeiture of this contract shall enure from the refusal or inability of the party of the second part to furnish the materials, motive power, or rolling-stock as may be necessary and hereinbefore mentioned. Estimates of the work done and materials furnished are to be made on the first day of each and every month pending the life of this contract, by the engineer of the party of the second part, or by his assistants, and payments therefor are to be made on the fifteenth day of each month.

SEC. 12. It is understood and agreed that all side-tracks are to be constructed when ordered, and paid for at the same rate and in
489 the same manner as paid for the main line; piles to be of oak, elm, pine, or tamarack, to be well driven, under the order of the party of the second part as to place and manner.

SEC. 11. It is further mutually agreed and understood that whenever each and every forty consecutive miles shall be completed to the satisfaction of the party of the second part, or the chief engineer thereof, he shall inspect and accept the same as completed.

SEC. 13. It is further mutually agreed and understood between the parties hereto that, as a guarantee for the faithful fulfillment of this contract, the party of the second part shall have the right to retain ten per centum of each and every estimate made by said chief engineer on said work performed or materials furnished, until the ten per centum so retained shall amount to fifty thousand dollars ($50,000); and when the work shall have been entirely completed to the satisfaction of the party of the second part, or the chief engineer thereof, he shall furnish a certificate to that effect to the party of the first part, and to the party of the second part, when the percentage so retained, and all other moneys
490 due, shall be paid to the party of the first part.

SEC. 14. It is further agreed and understood that in case of any suspension or stoppage of a longer duration than ninety days, it shall be the duty of the chief engineer to measure all work done, and materials furnished, and to make a return of the same to the party of the second part, when the amount so due for work done and materials furnished, together with all percentage retained at that time, shall be paid to the party of the first part.

SEC. 15. And it is further understood and agreed that, in consideration of the fulfillment and performance in good faith of all the stipulations contained in this contract by the party of the first part to be fulfilled and performed, the party of the second part will pay to the party of the first part, in lawful money of the United States of Amer-

ica, the rates, prices, and amounts severally set forth in the second section of this contract, and in conformity with the estimates of the chief engineer before mentioned.

In witness whereof the parties hereto have subscribed their names and affixed their seals, the day and year first written.

C. A. DE GRAFF. [SEAL.]
491 WM. CROOKS. [SEAL.]
NICHOLAS DE GRAFF. [SEAL.]

Signed, sealed, and delivered by C. A. De Graff, W. Crooks, and Nicholas De Graff, in presence of—
H. SAHLGAARD,
B. W. LOTT.

WILLIAM G. MOORHEAD, [SEAL.]
Construction Agent.

Signed, sealed, & delivered in the presence of—
GEO. E. BENT.

[Ten cents internal revenue stamps.]

EXHIBIT No. 24.

This article of agreement, made this fifth day of October, in the year one thousand eight hundred and seventy-one, by and between C. A. De Graff, W. Crooks, and Nicholas De Graff, partners doing business under the firm name of De Graff & Co., of the city of St. Paul, Minnesota, party of the first part, and William G. Moorhead, construction agent of the St. Paul and Pacific Railroad, First Division, party of the second part, witnesseth; That the party of the first part, for and
492 in consideration of covenants, agreements, and stipulations of said party of the second part, as hereinafter mentioned, promises and agrees to construct, execute, and finish in every respect in a substantial and workmanlike manner, and to the satisfaction of the party of the second part, or the chief engineer thereof, all the grubbing and clearing for a width of fifty feet on each side of the centre line, all grading, bridges, and culverts, track-laying, surfacing, and ties, for a single-track railroad, on that portion of the St. Paul and Pacific Railroad commencing at a point at the crossing of the Northern Pacific Railroad, and extending to Pembina, a distance of two hundred miles, or thereabout; said party of the first part agrees to complete the same on or before the first day of March, in the year one thousand eight hundred and seventy-three; said party of the first part also agrees not to assign this contract without the consent of the party of the second part.

It is mutually agreed and understood that the roadway shall be so graded that at subgrade all embankments shall be twelve feet in width, and all excavations shall be sixteen feet wide at base, with necessary ditches in excavations; ties, to the number of twenty-five hundred to the mile, to be of red or black oak, tamarack, red or rock elm,
493 Norway or black pine, ash, or hackberry, all to be eight feet long, six inches thick, and not less than six-inch face. If during the progress of the work rock should be found in the excavation, then the same is to be paid for as extra work, and at such price per cubic yard as the party of the second part may fix upon.

It is mutually understood that the theory of construction for this roadway shall be embankment, whenever possible, of not more than two feet in height, with a berme of three feet on either side, and the material

for the embankment furnished from the ditches, which are to be evenly and neatly made, with an inside slope of one and one-half horizontal to one vertical; the bridges and culverts to be of such designs as the party of the second part may approve, and are to be of wood with pile foundations; should stone work be substituted, then the same shall be estimated and paid for as extra, and at such price per cubic yard as the chief engineer thereof may fix and determine. The surfacing shall consist in raising the track sufficiently above subgrade, with material taken from the sides, as shall be necessary to give good
494 and even grades and joints, and secure proper drainage to the roadway; when it is necessary to haul material for the purpose of surfacing the roadway, then the party of the second part will pay the difference between carting and hauling as extra work, the party of the second part or the engineer before named to settle the price.

It is mutually agreed and understood that the party of the first part will commence said work of construction whenever notified to do so by the party of the second part, and be governed in the prosecution thereof as to time and manner, subject to the stipulations of this contract, by the party of the second part or the chief engineer before named.

It is mutually agreed and understood between said parties that to prevent disputes or misunderstandings between them in relation to any of the stipulations contained in this agreement, or their performance by either of said parties, that the chief engineer of the party of the second part shall be, and hereby is, made an umpire to decide all matters arising or growing out of this contract between them, and his decision shall be final.

It is mutually agreed and understood that whenever, in the opin-
495 ion of the party of the second part, it is necessary to stop any of the work or diminish the force employed, said party of the second part, by a notice in writing handed to the said party of the first part thirty days in advance, shall have the right to do so, and the party of the first part shall have no claim for damages, but shall stop the work or reduce the force as the party of the second part shall direct; provided that upon the resumption of the work the party of the first part shall have the right of resuming and completing said work within such time as may on such resumption be mutually agreed upon, and subject to the conditions and agreements mentioned in this contract, save only the time specified for completing the same.

It is further mutually agreed and understood that the party of the second party will furnish to the party of the first part, for use in the prosecution of the work hereby contracted for, such motive power and cars as may be necessary, free of any charge; it being understood, however, that the wages of the engineers and firemen shall be defrayed by the party of the first part during the time they are so employed.

496 And it is further mutually agreed & understood that the party of the second part will furnish to the party of the first part free transportation for all men and materials, stock and supplies, over their several lines, as the contractors may need in the prosecution of their work, the company to load and deliver all rails, splices, bolts, frogs, and switches, as the same may be required, at the end of the track, free of cost to the contractors; and no forfeiture of this contract shall enure from the refusal or inability of the party of the second part to furnish the material & motive power or rolling stock as may be necessary and hereinbefore mentioned; estimates of work done and materials furnished are to made on the first day of each and every month pending the life of this contract, by the engineer of the party of the second part, or by his

assistants, and payments therefor are to be made on the fifteenth day of each month. It is further mutually agreed and understood that whenever each and every forty consecutive miles shall be completed to the satisfaction of the party of the second part, or the chief engineer thereof, he shall inspect and accept the same as completed. It is understood and agreed that all side tracks are to be constructed when ordered, and paid for at the same rate and in the same manner as paid for the
497 main line. Piles to be of oak, elm, pine, or tamarack, to be well driven, under the order of the party of the second part as to place and manner.

It is further mutually agreed and understood between the parties hereto, as a guarantee for the faithful fulfillment of this contract, the party of the second part shall have the right to retain ten per centum of each and every estimate made by said chief engineer on said work performed or materials furnished, until the percentage so retained shall amount to fifty thousand dollars, and when the work shall have been entirely completed to the satisfaction of the party of the second part, or the chief engineer before named, he shall furnish a certificate to that effect to the party of the first part and to the party of the second part, when the percentage so retained and all other moneys due shall be paid to the party of the first part.

It is further agreed and understood that in case of any suspension or stoppage of a longer duration than ninety days, it shall be the duty of said chief engineer to measure all work done and materials furnished and make a return of the same to the party of the second part, when the amount so due for work done and materials furnished, together
498 with all percentage retained at that time, shall be paid to the party of the first part.

It is further understood and agreed that in consideration of the fulfillment and performance in good faith of all the stipulations contained in this contract by the said party of the first part to be fulfilled and performed, the party of the second part will pay to the party of the first part, in lawful money of the United States of America, the sum of four thousand six hundred and sixty dollars per mile, with the understanding that the amount of earth work per mile shall not exceed seven thousand seven hundred cubic yards, all excess of earth work to be paid for pro rata.

In witness whereof the parties hereto have subscribed their names and affixed their seals the day and year first written.

C. A. DE GRAFF. [SEAL.]
WILLIAM CROOKS. [SEAL.]
NICHOLAS DE GRAFF. [SEAL.]
WILLIAM G. MOORHEAD, [SEAL.]
Construction Agent.

Signed, sealed, and delivered by C. A. De Graff, William Crooks, and Nicholas De Graff in presence of—
N. SAHLGAARD,
B. W. LOTT.

Signed, sealed, and delivered in presence of—
JNO. W. SEXTON,
GEO. E. BENT.

499 EXHIBIT NO. 25.

Extract of letter from William G. Moorhead to L. Wilmar, London.

"I am interested in other enterprises which require much of my time

and means, and, as a partner in the banking house, cannot assume to go beyond the means furnished from time to time for this particular object. The contract with me, as you well know, is merely a formal affair. I will not profit in any way from it. I act as chairman of a committee of Northern Pacific Railroad Company in facilitating this business, and am willing to see that the money is properly expended, and the road built promptly when the means are furnished. I mention this that you may see the necessity for placing funds at my disposal at an early day, but, first of all, providing for the bills out. I cannot assume any financial responsibility beyond sale of bonds. Hoping you will find everything in this connection satisfactory,

"I am very truly yours,

"(Signed) WILLIAM G. MOORHEAD."

500 EXHIBIT No. 26.

(Exhibit C, No. 1.)

Saint Paul and Pacific Railroad Company (First Division) to DeGraff & Co., of St. Paul, Minn., dr.

1871.

Oct. 31. For work of construction on Brainerd branch, in accordance with contract of Oct. 2, 1871, as follows:

For 195,000 cubic yards of excavation, at 36 cents per yard	$70,200
Deduct 10 per cent	7,020
	$63,180

I hereby certify that this account is correct.

J. SPAULDING,
Division Eng'r, St. P. & P. R. R., Brainerd Branch.

Exhibit C, No. 1. [Duplicate.]
(Signed) H. E. MANN,
Examiner.

501 (Exhibit C, No. 2.)

Saint Paul and Pacific Railroad Company (First Division) to DeGraff & Co., of St. Paul, dr.

1871.

Nov. 30. For work of construction on Brainerd branch, in accordance with contract of Oct. 2d, 1871, as follows:

For 307,500 cubic yards excavation, at 36c. per yard	$110,700
Deduct 10 per cent	11,070
	$99,630
Deduct former payment	63,180
	$36,450

I hereby certify that this account is correct.

J. SPAULDING,
Div'n Eng'r St. P. & P. R. R., Brainerd Branch.

Exhibit C, No. 2. [Duplicate.]
(Signed) H. E. M., *Ex.*

502 (Exhibit C, No. 3.)

Estimate No. 1, St. Vincent extension, St. Paul & Pacific R. R.; work done in Nov., 1871; DeGraff & Co., contractors, 1st Division.

				Cub. yds.—Partial.
From Station	500	to Station	644	10,203.4
"	644	"	752	7,662.2
"	752	"	833	8,582.6
"	833	"	990	4,793.9
"	990	"	1100	1,191.4
"	1100	"	1260	3,051.2
"	1260	"	1430	4,062.2
Total cubic yards				39,546.9
At 36c.				$14,236.88
10 per cent. retained				1,423.68
Amount payable				$12,813.20

I certify the above estimate to be correct.

C. A. F. MORRIS,
Chief Engineer.

DEC. 7TH, 1871.
Exhibit C, No. 3.
(Signed) H. E. M., *Ex.*

503 (Exhibit C, No. 4.)

Estimate for December, 1871; St. Vincent branch, St. P. & P. R. R.; DeGraff & Co.

Grubbing and clearing 4 23-100 miles, between sections 11 and 24, at rate of $300 per mile			$1,269 00
Grading between St. Cloud and Sauk Center, 46,095 cubic yards, at 36c. per yard			16,594 20
Mechanical structures, 4,452 ft, b. m., at $33 per M			146 90
Grubbing and clearing country road (as charged), 20 days' labor, at $1.65, including tools			33 00
Grading county road and altering and removing bridge, as per bill and statement on file			256 32
500 cords of wood on line from St. Cloud to Sauk Center, at rate of $1.25 per cord			625 00
Ties on N. P. R. R., between Junction and Brainerd	73,063		
" line of Brainerd branch	12,751		
" Sauk Valley	35,000		
Total ties on St. Vincent branch, at 30c. each	120,814		36,244 20
Total St. Vincent branch estimates			$55,168 62
Less 10 per cent. retained			5,516 86
Amount payable on December estimate			$49,651 76

BRAINERD BRANCH ESTIMATE.

1,800 cubic yards, at 36c	$648 00	
40,100 ties, at 30c	12,030 00	
8,800 f't, b. m., in culverts, at $20 per M	176 00	
	$12,854 00	
Less 10 per cent. retained	1,285 40	11,568 60
Total amount of DeGraff & Co.'s estimate for December		$61,220 36

Correct.

CHAS. A. F. MORRIS,
Chief Engineer.

JAN. 19TH, 1872.

Exhibit C, No. 4.

H. E. M., *Ex.*

504 (Exhibit C, No. 5.)

DeGraff & Co.; St. Vincent branch, January; 1872.

Grading Sta.	500 to	644	5,022	cub. y'ds.
"	644 to	752	268	"
"	752 to	833	7,945.9	"
"	833 to	990	6,780.6	"
"	990 to	1,100	4,263.5	"
"	986 to	1,095	891.	"
"	1,100 to	1,260	2,358.9	"
"	1,260 to	1,920	19,356.0	"
			46,886.5	
46,886.5, at 36c. per yard			$16,879 14	

Exhibit C, No. 5.

H. E. M., *Ex.*

St. Vincent branch; January estimate, 1872; DeGraff & Co.

Grading 46,886 5-10 cubic y'ds is, at 36c. y'd	$16,879 00	
St. Cloud bridge, work and material	8,550 00	
Cord wood on line, 495 cords, at $1.25 p. c	618 75	
Ties, 199,868, at 30c	59,960 40	
	$86,008 15	
Less 10 per cent. retained	8,600 81	
Amount payable		$77,407 34

Correct.

CHAS. A. F. MORRIS.

FEB. 21ST, 1872.

SUMMARY OF AMOUNT PAYABLE.

Brainerd branch	$10,146 00
St. Vincent "	77,407 34
Total	$87,553 34

505 Brainerd branch; January estimate, 1872; work of construction.

1,400 cubic yards excavation, at 36c	$504 00
35,900 ties delivered, at 30c	10,770 00
	$11,274 00
Less 10 per cent. retained	1,127 40
Total payable	$10,146 60

Correct.

CHAS. A. F. MORRIS.

FEB'Y 21ST, 1872.

(Exhibit C, No. 6.)

February estimate; St. Vincent branch, St. P. &. P. R. R; 1872.

Grading 19,008 cubic yards, at 36c. per yard	$6,842 85
Ties 307,008, included in which are 40,000 white pine	83,102 40
Cord wood, 498¾, at $1.25 per cord	623 44
Piles, 696, $1.50 per pile	1,044 00
Timber delivered for culverts and bridges, 57,402 f't, at 16 per M	918 43
St. Cloud bridge, work and materials	21,665 52
Total DeGraff's estimates	$114,196 64
Less 10 p. c	11,419 66
Amount payable	$102,776 98

Details on other side.

I certify the above estimate to be correct.

CHAS. A. F. MORRIS.

Exhibit C, No. 6.

H. E. M., *Ex.*

506 DETAILS ST. CLOUD BRIDGE.

Riprap, 100 cubic yards, at $2.50	$250 00
Timber in foundations, 50,400 f't, at 26 per thousand	1,310 40
Masonry, 940 cubic yards, at $18 per yard	16,920 00
Timber in superstructure, delivered, 9,934 f't, at $22 per M	2,185 12
100 cubic yards of dressed stone, delivered, at $10 per yard	1,000 00
Total	$21,665 52

DETAILS OF GRADING.

Station	281 to 300	1,134		
"	302 to 343	400		
"	755 to	2,528		
"	777 to 789	2,093		
"	833 to 990	1,523		
"	990 to 1100	342.5		
"	1260 to 2097	8,064.8		
"	63 to 65	455	Alexandria division.	
"	99 to 101	658		
"	105 to 106	28.6		
"	156 to 157	395		
"	192 to 194	1,386		
Total		19,007.9		

February estimate; Brainerd branch, St. P. & P. R. R; 1872.

No grading.	
Piles, 6,590 lineal feet, 10c. per f't	$659 00
Ties, 51,020, delivered, at 30c. each	15,306 00
Total amount estimate	$15,965 00
Less 10 per cent. retained	1,596 50
Amount payable	$14,368 50

Brainerd Branch.

RICE.

	1st. Class.	
Wm. Chandler	15,754	
Shomn & White	14,272	
Fyhrie & Co	7,410	
D. A. Cameron	2,200	
G. T. Rice	2,261	No second class.
Total	41,897	

507 S. SHAY.

	1st class.	2nd class.
Hartnett	930	
Kent	152	
Grinnell	133	
McFarland	57	
Armstrong	.....	380
Graham	691	
Olden	490	
Lorett	205	
Waker	325	
Marko	415	
Christian	100	
G. Wimar	328	

Holter	273	
Hopkins	3,655	
Hollister	341	
Miller	441	
D. Cameron	3,202	
J. Spoel	670	
P. Ryane	118	
J. Stick	801	
M. Kittiard	254	
Erickson	8,837	2,772
Mertz	7,077	4,939
Total	29,495	8,091

HODGES.

LeMay & Grant	47,265
A. K. Lovejoy	7,255
Remly & Ford	17,750
W. Chandler	49,864
Total	122,134
White pine for January	40,391
	162,525

JUDKINS.

(No detailed estimate sent in.)

As per statement	20,000, at 30c
Round the lakes	45,000, at 10c
	65,000

508 White pine from January not included in that estimate.

A. K. Lovejoy	3,121
LeMay & Grant	34,169
Remley & Ford	3,101
	40,391

(Exhibit C, No. 7.)

1st Division, St. Paul & Pacific R. R.; March, 1872; estimate on St. Vincent branch; DeGraff & Co., contractors.

Grading 37,000 cub. y'ds, at 36c. per y'd	$13,320 00
Piles delivered, 256, at $1.50 per pile	384 00
" driven, 112, at $3.50 "	392 00
Sauk River bridge, riprap, 72 cubic y'ds, at $1.50	108 00
" " masonry, 230 " $12.50	2,875 00
" " foundation labor	314 00
Ties, 163,774, at 30c. per tie	40,132 20

Cord wood on right of way, 772 cords, at $1.25 p c		965 00
Total am't of estimate		$67,490 20
Less 10 per cent. retained		6,749 02
Amount payable		$60,741 18

St. Cloud bridge estimate; March, 1872.

Riprap for piers, 368 cubic y'ds, at $2.50 p. y'd		$920 00
Masonry laid, 428.5 " " $8, $10 p. y'd (ret'd last month)		3,428 00
Superstructure, 686 l'l feet, at $36 per l. f't	$24,696 00	
Less former estimate	2,185 12	
		22,510 88
Foundation labor on excavation (partial)		1,000 00
Amount payable		$27,858 88

509 Brainerd branch; March, 1872.

Grading, none		$
Piles delivered, no return		
" driven, "		
Masonry		
" stone delivered, no return		
Ties, 32,816, at 30c. per tie		$9,844 80
10 per cent. retained		984 48
Total payable		$8,860 32

Exhibit C, No. 7.

H. E. M., *Ex.*

(Exhibit C, No. 8.)

Summary of April estimate, 1872; St. P. & P. R. R.; DeGraff & Co.

St. Vincent branch	$43,887 29
Brainerd branch	8,555 79
St. Cloud bridge	11,115 51
Total	$63,458 59

Correct.

CHAS. A. F. MORRIS,
Chief Eng'r.

MAY 9TH, 1872.

Exhibit C, No. 8.

H. E. M., *Ex.*

1st Div. St. P. & P. R. R.; April estimate; St. Vincent branch; DeGraff & Co., contractors.

Grading 93,023 cub. y'ds, 36c. per cub. y'd		$33,488 28
Piles driven, 7,600 lin, f't. at 40c. per f't	$3,040 00	
Less former estimate	456 00	
		2,584 00

510	Culverts, 2,352 f't, b. m., at $17 per M		39 98
	" stone, 16 3-10 cub. y'ds, at $6		97 80
	" 912 f't, b. m., in foundations, at $17 per M		15 50
	" stone, on sec. 93, 13⅓ cub. y'ds, $3 per y'd		40 00
	Sauk River bridge:		
	Masonry, 350 cub. y'ds, at $16	$5,600 00	
	Less former estimate	2,875 00	
			2,725 00
	Riprap, 72 cub. y'ds, at $3 per y'd	$216 00	
	Less former estimate	108 00	
			108 00
	Foundations, leveling, extra work on abutments	$559 35	
	Less previous estimate	314 00	
			245 35
	Ties, 28,195, at 30c		8,458 50
	Cord wood on R. of way, 196, at $1.25		245 00
	Pile culverts, timber delivered, 15,000, b. m., at $20		300 00
	Wrought-iron bolts on hand, 5,203 lbs., at 8c		416 24
	Total		$48,763 65
	Less 10 per cent		4,876 36
	Total		$43,887 29

1st Div. St. P. & P. R. R; April estimate; Brainerd branch; DeGraff & Co., contractors.

Grading 9,678 cub. y'ds, at 36c. per y'd		$3,484 08
Timber in culverts, 5,160 f't, b. m., at $20 per M		103 20
Piles delivered, 2,549 lin. f't, at 10c. per f't		254 90
" driven, 1,671 " 30c. "		501 30
100 cub. y'ds stone del'd at Rock River bridge, at $5.00		500 00
Iron for bridges of 110, 130, 150 f't spans:		
Wrought iron, 47,459 lbs., at 07c		3,322 13
Cast iron, 25,562 lbs., at 05c		1,278 10
Oak clamps selected, 1,792, at $35		62 72
Total estimate for April		$9,506 43
Less 10 per cent		950 64
Total		$8,555 79

511 1st Div. St. P. & P. R. R; April estimate on St. Cloud bridge; final estimate; DeGraff & Co., contractors.

Masonry, 1,997.75, at $18 per cub. yd	$35,959 50	
Less former estimate	29,148 00	
		$6,811 50
Timber in foundations, 50,400 ft. b. m., $30	$1,512 00	
Less former estimate	1,310 40	
		201 60
Superstructure, 686 lin. ft., at $38	$26,068 00	
Less previous estimate	24,696 00	
		1,372 00

Wrought iron in foundations, 5,000, at 8c		400 00
Putting in foundations for piers and abutments	$3,017 41	
Less previous estimate	1,000 00	
		2,017 41
Clamps, dowells, and anchor irons in piers		213 00
Total		$11,015 51

(Exhibit C, No. 9.)

Summary of May estimate, 1872; Brainerd and St. Vincent branches, St. P. & P. R. R; St. Vincent Branch; De Graff & Co., contractors.

1st Division	$156,750 66
2nd "	32,947 92
Cross-ties on 1st and 2nd divisions	8,459 37
Brainerd Branch line	6,434 64
Total amount of May estimate payable	$204,592 59

I certify the above estimate to be correct.

CHAS. A. F. MORRIS,
Chief Engineer.

Exhibit C, No. 9.

H. E. M. *Ex.*

512 1st Division St. Paul and Pacific R. R., St. Vincent Branch; May estimate, 1872; De Graff & Co., contractors.

1ST DIVISION—ST. CLOUD TO GLYNDON.

Grading,	443,561	cubic yards,	at	36c.	per y'd	$159,714 36
"	94,966	"		2c.	" extra haul	1,899 32
Mech. structures,	9,809	f't, b. m.,	at	$17	per M	166 74
"	44,830	"		33	" in structures	1,479 39
"	100,000	"		21	" on hand	2,100 00
Piles driven,	286=5,253	lineal feet,	at	35c.	per foot	1,838 55
"	22= 353	"		40c.	complete	148 80
Piles delivered,	6,334	"		10c.		633 40
Grubbing and clearing, 10 miles, at $300 per mile						3,000 00
Sauk River bridge, 50,000 f't, b. m., at $22 per M						1,100 00
" "	iron, 19,613	lbs., at		8c		1,569 04
" "	" 8,630	"		6c		517 80
Total						$147,167 40
Less 10 per cent. retained						17,416 74
Total amount 1st Division, exclusive of ties						$156,750 66

1st Division St. Paul and Pacific R. R., St. Vincent Branch; May estimate, 1872; De Graff & Co., contractors.

2ND DIVISION—GLYNDON TO ST. VINCENT.

Grading, 12 miles complete, at $2,860 per mile	$34,320 00
Mechanical structures, Br. timber, 60,000 feet, $22 M	1,320 00
" iron, 5,860 lbs., bolts at 8c. per lb	468 80
Piles driven, 1,250 lineal feet, at 40c. per f't	500 00
Total estimate on 2nd Division	$36,608 80
Less 10 per cent. retained	3,660 88
Amount payable for May, 1872	$32,947 92

First Division St. Paul and Pacific R. R.; May estimate, 1872; Brainerd Branch; De Graff & Co., contractors.

Grading, 19,860 c. y'ds, at 36c. per y'd	$7,149 60
Less 10 per cent. retained	714 96
Amount payable on May estimate	$6,434 64

513 First Division St. Paul and Pacific R. R., St. Vincent Branch; May estimate, 1872; De Graff & Co., contractors.

TIES ON FIRST AND SECOND DIVISIONS.

Ties, 14,278, at 20c. per tie, Sauk Valley	$2,855 60
" 2,400, at 30c. " "	720 00
" 8,000, " " Branch line	2,400 00
" 79, " " "	23 70
" 34,000, at 10c. " N. P. R. R.	3,400 00
Total estimate for ties for May, 1872	$9,399 30
Less 10 per cent	939 93
Amount payable	$8,459 37

(Exhibit C, No. 10.)

Summary of June estimate, 1872; St. Vincent and Brainerd branches St. P. & P. R. R; St. Vincent Branch; De Graff & Co., contractors.

Less 10 per cent, retained.

1st Division, De Graff & Co., contractors	$162,598 64
2d " " "	132,427 94
Cross-ties on 1st and 2d divisions, De Graff & Co., contractors	9,107 55
Brainerd Branch line. " "	3,074 19
Amt. payable on June est	$307,208 32

ENGINEER'S OFFICE, ST. PAUL & PACIFIC R. R.,
Saint Paul July 9th, 1872.

I certify the above estimate to be correct.

CHAS. A. F. MORRIS,
Chief Engineer.

St. Paul and Pacific R. R., St. Vincent Branch; 1st Division—St. Cloud to Glyndon; June estimate, 1872; De Graff & Co., contractors.

Grading 442,324 cub. yd.s, at 36c		$159,236 64
Rock excavation, 325½ cub. yds, at 75c		244 12
Extra haul, 71,437 " 2c		1,428 74
Grubbing and clearing 2 miles, $3		600 00
MECHANICAL STRUCTURES.		
Sauk River bridge, 2 spans, 102½ ft. each, at $26 per lineal foot	$5,330 00	
Track superstructure—9,348 ft., b. m., at $33	308 48	
	$5,638 48	
Less prev. estimate	3,186 84	
Amount payable		2,451 64
Trestle bridge, sec. 97, 9,904 ft. b. m., at $33 per m.	$326 83	
Less prev. estimate	24 20	
Amount payable		302 63
Box culverts, 2,030 ft., b. m., at $17 per M ($16 prev. all'd)		34 51
Box culverts, 6,504 ft. b. m., at $33 per M		214 63
Stone, 46 cub. yds., at $2.50 per yd. (sec. 173)		115 00
Lake fence to prevent banks from washing, as per bill, secs. 146 and 148		73 90
Timber culvert, 11,965 ft. b. m., at $33 per M		394 84
Materials delivered at St. Cloud for mech. structures, to June 30, 150,000 ft., at $21 per M	$3,150 00	
Less prev. estimate of 100,000 ft., at $21 per M	2,100 00	
Amount payable		1,050 00
Timber delivered at Alexandria, 8,500 ft. b. m. at $22 per M		187 00
Piles driven, 207=3,706 lin. ft., at 40c	$1,482 40	
Less prev. est. 81 piles, at $1.50 per pile	121 50	
Amount payable		1,360 90
4,320 ft. b. m. road crossings, at $26 per M	$112 32	
Less prev. estimate	69 12	
Amount payable		43 20
Cattle guards, 5,376 ft. b. m., at $33 per M		177 41
TRACK LAYING.		
17 miles of track, at $500 per mile		8,500 00
17 miles of ties in track, at $250 per mile		4,250 00
515 Ties on Crow Wing River, 47,952 at 10c		4,795 20
" along Sauk Valley, 17,239 at 20c		3,447 80
" " " " 6,040 at 30c		1,812 00
Cordwood, 43 cords at $1.50		64 50
Total		$199,784 66

Less 10 per cent. retained		19,078 47
Amount payable on June estimate		$171,706 19

St. Paul and Pacific R. R., St. Vincent Branch; 2d Division—Glyndon to St. Vincent; June estimate, 1872; DeGraff & Co., contractors.

Grading 46 miles at $2,860 per mile		$131,560 00

MECHANICAL STRUCTURES.

30 miles at $300 per mile	$9,000 00	
Less prev. estimate	2,288 80	
Am't payable		6,711 20
Track laying and surfacing 8 miles at $500 per mile		4,000 00
Ties in track, 8 miles at $250 per mile		2,000 00

MATERIAL DELIVERED AT GLYNDON.

1,502 bolts=3,987 lbs. at 8c. per lb	318 96
Bridge timber, 116,000 f't, b. m. at $22 per M	2,552 00
Total	$147,142 16
Less 10 per cent. retained	14,714 22
Am't payable on 2d Div. for June	$132,427 94

St. Paul and Pacific R. R., Brainerd Branch; June estimate, 1872; DeGraff & Co., contractors.

Grading sections 54 to 61 (final), 9,266 c. y'ds at 36c	$3,335 76
Timber in culverts, 4,000 f't. b. m. at $20 per M	80 00
Total	$3,415 76
Less 10 per cent. retained	341 57
Am't payable on June estimate	$3,074 19

516 (Exhibit C, No. 11.)

Summary of July estimate, 1872; St. Vincent and Brainerd branches, St. P. & P. R. R.

St. Vincent Branch—1st Division	$124,379 16
" " 2nd Division	81,566 99
" " Cross-ties, 1st and 2nd divisions	8,027 80
Brainerd Branch line	2,254 37
Total	$216,228 32

Contractor's copy correct.

CHAS. A. F. MORRIS,
Chief Engineer.

AUG. 8TH, 1872.
Exhibit C, No. 11.

H. E. M., *Ex.*

St. Paul and Pacific R. R., St. Vincent Branch; 1st Division—St. Cloud to Glyndon; July estimate, 1872; DeGraff & Co., contractors.

Grading 303,527 cub. y'ds at 36c		$109,269 72
Etra haul, 238,086 cub. y'ds, at 2c		4,761 74
Rock excav., 293 " 75c		219 75
Grubbing and clearing 6 miles, at $300 per mile		1,800 00
MECHANICAL STRUCTURES.		
Cattle guards, sec's 80 to 87, 10,752 f't, at $33		354 82
Box culverts, sec. 79, 432 f't, b. m., at $17		7 34
" sec. 104, 840 f't, b. m., at $33		27 72
PILES DRIVEN.		
131 piles, 2,096 lin. f't, at 40c	$838 40	
Less prev. estimate	240 00	
Amount payable		598 40
PILE BRIDGING.		
4,578 lin. f't, piling, at 40c	$1,831 20	
52,802 f't, b. m., at $33	1,742 46	
4,191.2 lbs. wrought iron, at 8c	119 30	
469.5 lbs. cast iron, at 6c	28 17	
412.4 lbs. 7 in. spikes, at 7c	28 89	
Total	$3,750 02	
Less prev. est.	2,300 84	
Amount payable		1,449 18

517

ROAD CROSSINGS.		
1,152 ft. b. m., at $10, ($16 prev. est.)		11 52
3,744 " 26		97 34
1,716 " 4, ($22 prev. est.)		6 86
Bridge ties, 693 f't, b. m., at $11, (22 prev. est.)		7 62
BOX CULVERTS.		
4,240 f't, b. m., at $11, ($22 prev. est.), sec's 143, 147		46 64
9,864 " 33, sec. 153		325 51
Grading and preparing Alexandria depot grounds		153 25
TRACK LAYING.		
12 miles, at $300 per mile		3,600 00
12 miles ties in track, at $250 per mile		3,000 00
Cordwood, 11 cords poplar wood, at $1.25		13 75
Material delivered for Sauk River bridges		4,140 00
2,200 f't, well curbing at Glyndon, at $33		72 60
Digging well at Glyndon		18 75
Total		$129,982 51

Less percentage retained		5,603 35
		$124,379 16

NOTE 1.—The percentage retained this month makes a total of $100,000, as called for under contract of St. Vincent Branch.

St. Paul and Pacific R. R., St. Vincent Branch; 2d Division; July estimate, 1872; DeGraff & Co., contractors.

Grading 20 miles, at $2,860 per mile		$57,200 00
Mech. structures 25 miles, at $300 per mile	$7,500 00	
Less prev. est	2,870 96	
Amount payable		4,629 04

TRACK LAYING AND SURFACING.

28 miles, at $300 per mile	8,400 00
13 miles surfacing, at $200 per mile	2,600 00
28 miles ties in track, at $250 per mile	7,000 00

518 TIMBER DELIVERED AT GLYNDON.

200,998 f't, b. m., at $22	$4,421 95	
Less 176,000 f't, b. m., prev. est	3,872 00	
Amount payable		549 95

LOADING AND UNLOADING MATERIAL.

Iron, spikes, splices, ties, and sawing wood, June	688 00
" " " " " July	500 00
Amount payable	$81,566 99

1st and 2d divisions; July estimate, 1872—continued.

TIES.

14,885 ties in Sauk Valley, at 30c	$4,465 50
3,914 " " 20c	782 80
7,865 " run down Mississippi River, at 30c	2,359 50
2,100 " on Crow Wing River, at 20c	420 00
Amount payable	$8,027 80

St. Paul and Pacific R. R., Brainerd Branch; July estimate, 1872; DeGraff & Co., contractors.

BRIDGE MATERIAL DELIVERED AT HINCKLEY.

1 130 ft. span, 38,072 f't, b. m., at $21	$799 51
1 150 " 47,478 " 21	997 04
1,174 switch ties, at 60c	704 40

13 common	"	30c	3 90
Total			$2,504 85
Less 10 per cent. retained			250 48
			$2,254 37

519 (Exhibit C, No. 12.)

Summary of August estimate, 1872; 1st and 2d divisions St. Vincent extension, and Brainerd Branch, Saint Paul and Pacific R. R.; De Graff & Co., contractors.

St. Vincent extension—1st Division		$93,144 76
" "	2d Division	132,514 59
" "	ties, 1st and 2d divisions	21,832 60
Brainerd Branch		6,279 48
Grand total		$253,771 43

Exhibit C, No. 12.

ENGINEER'S OFFICE, ST. P. & P. R. R.,
St. Paul, Sept. 12th, 1872.

CHAS. A. F. MORRIS,
Chief Engineer.
H. E. M., *Ex.*

Estimate for the month of August, 1872; St. P. & P. R. R.; St. Vincent extension; De Graff & Co., contractors; 1st Division.

Grading, 189, 192 cub. y'ds, as	36c.	per y'd			$68,109 12
Extra haul, 290,881	"	2c.	"		5,817 62
Rock excavation, 19.8	"	75c.	"		14 85
Ditching in cuts, 55	"	36c.	"		19 80
Masonry in culverts, 12.5 cub. y'ds, at $2.50 per y'd					31 25
Grubbing and clearing 8½ miles, at $300 per mile					2,550 00

MECHANICAL STRUCTURES.

Box and open culverts, 14,199 f't b. m., at $33 per M		468 56

PILE BRIDGING.

7,848 lin. f't piling, at 40c. per lin. f't	$3,139 20		
1,310 " " (del'd) at 10c. per lin. f't	131 00		
77,783 " b. M., at $33 per M	2,566 83		
2,587 lbs. wr't iron. at 8c	207 03		
644.3 lbs. cast iron, at 6c	38 66		
200.4 lbs. 7 in. cut spikes, at 7c	14 02		
	$6,094 74		
Less prev. est	2,945 30		
			3,151 44

520 TRUSS BRIDGES.

2 spans, framed at St. Cloud, 105 f't each, at $23.75 per f't		$4,987 50	
2 span' at St. Anthony, 91 f't each, at $22.80 per f't		4,149 60	
		$9,137 10	
Less $3 per foot for raising	$1,176 00		
" prev. est. in July	4,140 00		
		5,316 00	
			3,821 10
50,000 f't b. m., for pile and open culverts, delivered at St. Cloud, at $18 per M			900 00

ROAD CROSSINGS.

J. R. Clark, Sub-contr'ct.

5,942 f't b. m., at $26 per M., road crossings at East and West St. Cloud	154 49
Wells at St. Joe and Avon Stations, including buckets, ropes, windlass, &c., &c., as per bill furnished	219 03

TRACK LAYING AND SURFACING.

Track laying, 9 miles, at $300 per mile	2,700 00
Ties in track, 9 " 250 "	2,550 00
Surfacing, 8 " 200 "	1,600 00
Corduroying as per detailed bill presented	311 00

RIGHT OF WAY—CORDWOOD.

821.2 cords, at $1.25 per cord	1,026 50

TIES.

100,000 ties on N. P. R. R., at mouth of Crow Wing River, at 30c		$30,000 00	
Less prev. estimate in May, 34,000 at 10c	$3,400 00		
Less prev. est. June, 47,592 at 10c	4,795 20		
Less prev. est. in July, 2,100 at 20c	420 00		
		8,615 20	
			21,384 80
2,239 ties at Sauk Valley, at 20c			447 80
1st division, total for August			$114,977 36

August estimate, 1872—continued: 2d Division; DeGraff & Co., contractors.

GRADING.

38 miles at $2,860 per mile	$108,680 00

521 MECHANICAL STUCTURES.

9 miles at $300 per mile	2,700 00

TRACK LAYING.

28 miles at $300 per mile	8,400 00

SURFACING.

19 miles at $200 per mile	3,800 00

TIES IN TRACK.

28 miles at $250 per mile	7,000 00

MATERIAL DELIVERED AT GLYNDON.

87,936 f't b. m. at $22	1,934 59
2d division, total for August	$132,514 59
1st " " "	114,977 36
Total St. Vincent extension	$247,491 95

Estimate for the month of August, 1872; St. Paul and Pacific R. R. Brainerd Branch; DeGraff & Co., contractors.

MASONRY.

Little Rock River bridge abutments

FINAL ESTIMATE.

220 cub. y'ds excavation for abutments of bridge at 15c. p. y'd			$33 00
220 cub. y'ds rubble masonry at $13.50 per y'd.		$2.970 00	
Less cost of piles	$300 00		
Less stone delivered	500 00		
		800 00	
			2,170 00

PILES DRIVEN.

406 lin. f't at 30c. per lin. f't	121 80

522 MATERIAL DELIVERED.

One 110 f't span at St. Anthony, at $24.50 per f't		$2,695 00	
One 130 f't span at Hinckley, at $27.33 per f't		3,552 90	
One 150 " " " $30.00 "		4,500 00	
		$10,747 90	
Less $3 per foot on above spans for raising	$1,170 00		
Less iron del'd in April	4,662 95		
Less timber " "	1,796 55		
		7,629 50	
			3,118 40
Timber delivered at Brainerd, 41,814 f't b. m. at $20 per M.			836 28
Total for August, Brainerd branch			$6,279 48

(Exhibit C, No. 13.)

Final estimate; September, 1872; Brainerd Branch; DeGraff & Co., contractors.

GRADING.

26,616 cub. y'ds, at 36c. per y'd		$9,581 76

MECHANICAL STRUCTURES.

5,862 lin. f't piling, at 30c. per lin. f't		$1,758 60
50,000 f't, b. m., at $20 per M	$1,000 00	
Less previous estimate in August, 41,814 f't. at $20	836 28	
		163 72
1,053 lbs. wrought iron at 7c. per lb		73 71
295 " cast " 5c. "		14 75
696 " spikes " 6c. "		41 76

TIMBER DELIVERED.

36,490 f't b. m., at $15 per M	952 35

523 TRACK LAYING AND SURFACING.

Track laying, 4.18 miles, at $125 per mile	522 50
Surfacing and tie distributing, 2.48 miles, at $175 per mile	434 00
Total	$13,543 15
Less per cent. retained for August, previously omitted $627 94	
Less per cent. for September, making up total amount retained as per contract, viz, $20,000 1,050 63	
	1,678 57
Total amount due	$11,864 58

CHAS. A. F. MORRIS,
Chief Engineer.

Estimate for September, 1872, Saint Paul and P. R. R., Saint Vincent Branch; De Graff & Co., contractors; 1st Division.

Grading 75,083 cub. y'ds, at 36c. per yd	$27,029 88
Extra haul, 120,455 cub. y'ds, at 2c. per y'd	2,409 04
Rock excavation, 32 cub. y'ds, at 75c. per y'd	24,00

MECHANICAL STRUCTURES.

Box and open culverts, 8,864 ft. b. m. at $33 per M	292 51

PILE BRIDGING.

6,364 lin. ft. piling at 40c. per lin. ft		$2,545 60	
84,134 ft. b. m. at $33 per M.		2,776 42	
50,000 ft. b. m., delivered at $16 per M		800 00	
3,074 lbs. wrought iron at 8c. per lb		245 92	
704.2 lbs. cast iron at 6c. per lb		42 25	
		$6,410 19	
Less previous estimate piles driven	$2,089 80		
" " " timber delivered	900 00		
		2,989 80	
			3,420 39
2,808 ft. b. m. at $21 per M			58 84
Truss bridge, 105 lin. ft. at $3 per ft. for raising			315 00

ROAD CROSSINGS.

1,152 ft. b. m. at $26 per M	29 95

524

CATTLE GUARDS.

4,480 ft. b. m. at $33 per M	147 84

WATER FENCE.

5,276 ft. b. m. at $18 per M	94 96
170 posts at 18c. each	30 60

TRACK LAYING AND SURFACING.

Track laying, 10 miles at $300 per mile	3,000 00
Ties in track, 10 " 250 "	2,500 00
Surfacing, 17 " 200 "	3,400 00
Extra work clearing depot grounds, 32 days at $2	64 00
Total 1st Division	$42,817 01

September estimate, 1872, 2d Division; De Graff & Co., contractors.

GRADING.

25.42 miles at $2,860 per mile	$72,701 20

MECHANICAL STRUCTURES.

36 miles at $300 per mile	$10,800 00	
Less amount prev. estimated material del'd in July and August	2,484 54	
		8,315 46

TRACK LAID.

31.89 miles at $300 per mile	9,567 00

TIES IN TRACK.

31.89 miles at $250 per mile	7,972 50

SURFACING.

38.54 miles at $200 per mile	7,708 00

CORDWOOD.

160.5 cords on right of way, $1.25	200 60
Total 2d division	$106,464 76

CHAS. A. F. MORRIS,
Chief Eng'r.

OCT. 24TH, 1872.

525 (Exhibit C, No. 14.)

Summary of October estimate, 1872, on St. Vincent extension, St. P. & P. R. R.; final; De Graff & Co., contractors.

1st Division	$27,803 76
2d Division	21,951 69
Ties, A. Moore, sub-contractor	3,249 80
Total	$53,005 25

Correct.

C. A. F. MORRIS,
Chief Engineer.

Exhibit C, No. 14.
(Signed) H. E. MANN, *Ex.*

Final estimate, St. Vincent extension, October, 1872; De Graff & Co., contractors.; 1st Division.

GRADING.

26,101	cub. y'ds, at	36c. per yard	$9,396 36
132,664	"	extra haul, at 2c. per y'd	2,653 28
21	"	rock excavation, at 75c. per y'd	15 75
10,000	"	earth hauled on banks	2,000 00

GRUBBING AND CLEARING.

33.67 miles at $300 per mile	10,101 00

MECHANICAL STRUCTURES.

1,605 ft. b. m., for water fence, at $18 per M	28 89
60 posts, for water fence, at 18c. per post	10 80

TIMBER DELIVERED FOR OPEN CULVERTS.

2,390 ft. b. m., at $18 per M	43 02

526 PILE BRIDGING.

13,338 ft. b. m., at $33 per M		$440 15	
458.7 lbs. wr't iron, at 8c. per lb		36 70	
112.2 lbs. cast " 6c. "		6 73	
			483 58
2,129 lin. ft. piling, at 40c. per lin. ft.		$851 60	
Less 1,890 " former est., at 40c		756 00	
			95 60
4,236 lin. ft. piles, delivered, at 10c		$423 60	
1,274 " " driven, at 30c		382 20	
		$805 80	
Less 311 lin. ft. piling taken to Brainerd line		31 10	
			774 70
65,017 ft. b. m., del'd, at $18 per M		$1,170 31	
33,019 " framed, at $25 per M		825 47	
		$1,995 78	
Less 50,000 ft. est'd in Sept., at $16	$800 00		
" 15,000 ft. oak clamps, at $20	300 00		
" 5,860 lbs. drift-bolts, at 8c. per lb	468 80		
		1,568 80	
			426 98
105 lin. ft. span bridge, 2d crossing of Sauk River, at $3.25 per lin. ft.			341 25

CATTLE GUARDS.

8,932 ft. b. m., framed, at $26 per M	232 23
Crossing plank, 2,208 ft. b. m., at $18 per M	39 74
Switch-blocks, 2,560 " " $18 "	46 08

TRACK LAYING.

Total track laid, 48½ miles.
Former estimate, 48 "

½ " at $300 per mile	150 00
½ mile ties in track, at $250 per mile	125 00
Gravel track, 0.19 of a mile, at $550 per mile	104 50

BALLASTING.

3½ miles at $200 per mile	700 00

CORDWOOD ON RIGHT OF WAY.

28 cords at $1.25 per cord	35 00
Total 1st Division	$27,803 76

527 October estimate, St. Vincent extension; final; 2nd Division.

GRADING.

142.59	miles	completed in main track	
4.75	"	" side "	
147.34	"	total amount completed	
141.42	"	" " previously estimated	
5.92	"	completed in October, at $2,860 per mile	$16,931 20

EXTRA WORK.

Excavating ditches to drain wild rice	
River bottom, 6,262.7 cub. y'ds, at 36c. per y'd	2,254 75
Loading iron, ties, &c., at Glyndon	984 35

MATERIAL DELIVERED AT GLYNDON.

98,976 ft. b. m. at $18 per M	1,781 57
Total 2nd Division	$21,951 69

October estimate, St. Vincent extension.

TIE ESTIMATE.

13,276 ties, tamarac and oak, at 30c. per tie	3,982 80
Less amount previously estimated in February, 1872, viz, 7,330 ties, at 10c. per tie	733 00
Amount due	$3,249 80

528 EXHIBIT 27.

3 EAST INDIA AVENUE, LEADENHALL STREET,
London, 30 *November*, 1871.

W. G. MOORHEAD, Esq'r, *Philadelphia:*

MY DEAR SIR: I was obliged, in answer to your telegram received to-day, to decline to take any part in the payment of coupons of 2d mortgage bonds by in any way touching the £50,000 placed at your disposal by Messrs. Lippman & Rosenthal, nor can I ask them for any money specially intended to meet this payment. The reason is obvious. Messrs. Hambro & Sons are instructed to pay certain drafts drawn by Mr. Moorhead, but they have no instructions to pay those drawn by Mr. Wilmar. I should, therefore, have to ask Amsterdam to give fresh instructions to the London house explaining the reasons for such alterations.

Messrs. L. and R., intrusted with the care of supporting an already heavy market, will never consent, against all right, to place on a par with the first mortgage the second one, by intervening in any way in the payment of the coupons of the latter. By so doing they would vertually accept the mortgage of $12,000,000 instead of one of
529 $9,000,000 on the main line. The above-mentioned remittance is made to Mr. Moorhead, construction agent, for the extensions, who will apply it to best interests of the bondholders. But as we have unbounded confidence in him, we shall certainly not inquire into the immediate use he has made of these funds, and if you think proper to

place a portion of them at the disposal of the N. P. to pay these coupons, as it is their duty to do, we see no objection to your so doing, as we are convinced you will get it restituted as soon as the market require' this money.

I received a letter from Amsterdam this morning advising a remittance of £20,000 for Mr. Litchfield's acceptances in December. In the same letter my friends send me the remarks of several Dutch colonists in Minnesota, complaining that the name of the Northern Pacific is substituted to that of the St. Paul & Pacific on the cars of both our lines. They foresee in this an attempt to take away the autonomous character our lines must retain until the bonds are repaid in full. Another fact has equally produced a very bad effect in Holland; it is the announcement made in the newspapers, published by your London
530 house, of the sale of the extension lands by an agent of the N. P. No announcement could be more useless and more compromising. You cannot expect to get a single English purchaser, and you gratuitously displease the Dutch bondholders, to whom these lands belong until their bonds are repaid.

We find it already quite difficult enough to heal the wounds inflicted by Mr. Becker, without having to combat fresh difficulties. I must, therefore, apply to you as trustee to prevent the recurrence of acts which cause as much harm to the N. P. bonds as to those of the St. Paul & Pacific bonds, because the public will see therein the appearance of a desire not to respect the guarantees given to the new subscribers, a desire which is certainly far from your intentions and that of your colleagues. As far as I am concerned, having lost confidence in the man whose functions would entitle him to this local surveillance, I can only depend upon you, and I fully rely on the loyal and powerful assistance we have always found in you, and I am sure a line from you to Governor Smith will suffice to put a stop to these small encroachments, the
531 bad effect of which you cannot fully appreciate. It was Governor Smith's letter that restored confidence which the last faulty document sent by Mr. Becker had completely destroyed, and I am certain that in this case he shall not hesitate to put a stop to measures hurtful to all.

Confirming my letters of the 18th & 25th inst., I think it advisable to, if possible, ascertain from the St. Paul & Sioux City R. R. Co. the dates of their payments to Mr. Becker for the rails they had purchased; the first mention made by Mr. Becker is in his account closed in September for $1,300; in October, $8,500.

By my cable I requested you not to mention to Mr. Hambro the origin of your drafts, but merely to advise them that you had drawn on account of Messrs. L. & R., and advise the latter in due time to give the necessary instructions to Mr. Hambro.

I remain, my dear sir, yours, very truly,

L. WILMAR.

532 EXHIBIT 28.

ST. PAUL, *December 9th*, 1872.

W. G. MOORHEAD, Esq'r,
Construction Agent:

DEAR SIR: In preparing my annual report to the board of directors, it will be necessary to embody a statement of the expenditures incurred upon the St. Vincent and Brainerd Extensions, and for purchase of iron,

&c., &c., to be used on those lines. Will you please have the accounts promised some time since, covering your receipts and disbursements as construction agent, completed and sent me as early as possible, that the figures may be used in making up my statement. It will also be necessary to include the details of disbursements of the funds realized by the sale and hypothecation of iron, made by you under authority of our board, of which I have already had only a general memorandum.

As I desire to make my report as full as possible, and but a short time remains before the close of the year, I shall esteem as a favor your early attention to the preparation and forwarding of the desired accounts.

Respec'y yours,

GEO. L. BECKER, *Pres't.*

533 EXHIBIT 29.

(Duplicate of Exhibit 18.)

PHILADELPHIA, *Oct. 20th*, 1871.

MESSRS. DE GRAFF & CO.:

GENTLEMEN: I telegraphed you on the 18th inst, "Don't commence work on either Brainerd or Pembina line for the present." You answered, "Brainerd line all under contract and will be finished next month; also started on Pembina line; will go slow."

I regret that you commenced, inasmuch as no funds have been provided from sale of bonds, nor will there be, I fear, for some months to come. The Breckenridge line must be completed and paid for before anything can be obtained for construction of new lines. I trust all will come out right after a little time; but I cannot promise payment faster than the Amsterdam bankers will provide means. I wish this distinctly understood. I am merely acting as "Amsterdam agent," and will not assume responsibilities in regard to payments.

I asked for $2,000,000 to continue operations until April, which they did not object to, and now say that after a couple of months they doubt not funds will be provided. I don't know these people personally,
534 and am not willing to risk promises. I wish to see the cash before promising prompt payment myself. You and Mr. Becker have to do with this business, and can judge what course to adopt. I appreciate the importance of progressing with the work, but still more do I appreciate the necessity of having cash for the purpose.

Respectfully yours,

(Signed) WILLIAM G. MOORHEAD.

EXHIBIT NO. 30.

NEW YORK, *27th September*, 1871.

WM. G. MOORHEAD, Esq.:

SIR: We propose, in the division commencing at the west end of the bridge spanning the Mississippi River to be located at or near St. Cloud, and terminating at a point one hundred and twenty (120) miles or thereabouts from such point of beginning, as follows, viz:

We will do all grubbing and clearing for a space of fifty (50) feet on each side of the centre line, all grading, furnish material, and build all bridges, culverts, and sluices, furnish all ties, lay track, and surface the same, in a thorough manner, with banks twelve feet in width, and

535 cuts sixteen feet in width, for eight thousand three hundred and sixty dollars ($8,360) per mile, with the understanding that the amount of earth-work per mile shall not exceed fifteen thousand (15,000) cubic yards, all excess of earth-work to be paid for pro rata.

For the division No. 2, commencing at a point one hundred and twenty miles from St. Cloud and terminating at Pembina, on the international boundary, a distance of two hundred miles, more or less, and doing all the work specified to be done on the first division of one hundred and twenty miles, for the sum of four thousand six hundred and sixty dollars ($4,660) per mile, with the understanding that on this division the amount of earth-work per mile shall not exceed seven thousand seven hundred (7,700) cubic yards, all excess of earth-work to be paid for pro rata. We will build and complete the bridge across the Mississippi River at or near St. Cloud, including the preparation of foundations on cribs, grillage, or otherwise, with a wooden superstructure of Howe truss (track on top chord), for the sum of seventy-five thousand two hundred dollars ($75,200); the whole of the above works to be completed as soon as required by the company. Piers and abutments to be of granite. Details of contract to be mutually agreed upon. The
536 company to furnish, free of cost, such motive power and cars as may be necessary for purposes of construction, and transport free over their several lines such materials, supplies, men, stock, and machinery as the contractors may need in the prosecution of these works. The company to load and deliver all iron rails, splices, bolts, frogs, and switches, as the same may be required at the end of the track, free of cost to the contractors.

DE GRAFF & CO.,
Contractors.

EXHIBIT No. 31.

ST. PAUL, MINNESOTA,
November 9th, 1871.

CHARLES A. F. MORRIS, Esq.,
Chief Engineer:

SIR: We will build your bridge at St. Cloud across the Mississippi River, for the St. Paul and Pacific Railroad, crossing complete, including foundations of square timber (to be twelve inches square), covered with plank three (3) inches thick, nailed or tree-nailed, as required, and masonry of range rock, first class, and of granite, with joints three-quarters of an inch, and all laid in hydraulic cement, salinated, if weather requires, and a superstructure consisting of three (3) spans
537 of two hundred (200) feet each, from centre to centre, with iron clamps and keys, calculated to a capacity for a moving load of two thousand (2,000) pounds per lineal foot, and the materials used as a factor of safety of fire (the bridge superstructure to be of the "Howe truss"), for the gross sum of fifty-seven thousand dollars ($57,000); or we will put the same superstructure as described above, resting upon piers and abutments of good rubble work (stone to be of granite), with angles and starlings of range work, for the gross sum of fifty-two thousand eight hundred dollars ($52,800), the whole to be completed on the first day of May, 1872.

Yours, truly,

DE GRAFF & CO.,
Contractors.

I respectfully recommend the acceptance of the bid for first-class range work.

CHAS. A. F. MORRIS,
Chief Engineer.

NOVEMBER 10, 1871.

538 EXHIBIT No. 32.

Articles of agreement, made this fourth day of December, A. D. 1871, between C. A. De Graff, William Crooks, and Nicholas De Graff, partners under the firm-name of De Graff & Co., of the city of St. Paul, Minnesota, party of the first part, and William G. Moorhead, construction agent of the St. Paul & Pacific Railroad, First Division, party of the second part, witnesseth: That the parties of the first part, for and in consideration of the agreements, covenants, and stipulations of said party of the second part, as hereinafter mentioned, promise and agree to execute, construct, and finish in every respect in the most workmanlike & substantial manner, and to the satisfaction and acceptance of the chief engineer or his assistants, of the said party of the second part, all the masonry in piers and abutments required for railroad bridges over the Mississippi River at or near St. Cloud, in said State of Minnesota, and the superstructure for the same. And the party of the first part agrees to put in coffer-dams and thoroughly prepare and level off the river bottom on which said piers are to rest, or otherwise prepare a safe and secure foundation, as the chief engineer shall direct, at
539 such price as may be fixed by the said chief engineer. The said party of the first part agrees to commence said work within one week from the date of this agreement, and prosecute the same with such force and means as will, in the opinion of said chief engineer, insure the completion of the foundations and masonry on or before the fifteenth day of March, A. D. 1872, and the final completion of masonry and superstructure on or before the first day of May, A. D. 1872; to be subject, at all times during the progress of said work, to the directions of said chief or assistant engineers as to the mode of doing the same, and to progress on such points and in such manner as said chief or assistant engineers shall direct, and to conform to the specifications herewith attached, and which form part of this agreement.

And it is further understood and agreed that if said party of the first part shall execute any portion of said work defectively, and if such imperfection shall not be of sufficient magnitude as to require, in the opinion of said chief engineer or his assistants, the taking down or rebuilding of such imperfect part, the said chief engineer shall have power, and he is hereby authorized, to make such reduction as he
540 shall think proper from the stipulated prices of said work.

Extra work.—And it is further understood and agreed that in case the said chief engineer shall direct any extra work to be executed by the said party of the first part, said work shall be performed, as directed, by said party of the first part, and said chief engineer shall assess and fix the value of said extra work, and his decision shall be final and binding, and said value so fixed and assessed shall be paid at the times and in the manner hereinafter specified for regular contract work, and no claim for extra work shall be allowed unless on similar order of said chief engineer.

And it is further understood and agreed that in case any misunderstanding shall arise between the parties hereto as to any matter or point touching this contract, the decision of said chief engineer shall be

final and conclusive on the parties hereto, and each of said parties here by waives any and all rights of action or other remedy, in law or otherwise, arising out of this contract.

In consideration of the faithful performance of the for'going,
541 the party of the second part agrees to pay the party of the first part as follows:

(Here follow prices and specifications.)

In witness whereof the parties hereto have subscribed their names and affixed their seals, the day and year first above written.

C. A. DE GRAFF. [SEAL.]
WILLIAM CROOKS. [SEAL.]
NICHOLAS DE GRAFF. [SEAL.]

Signed, sealed, and delivered in the presence of—
JAMES D. SKINNER.
OLIVER EVENS.

EXHIBIT No. 33.

ALBERMARLES HOTEL,
New York, June 19th.

MY DEAR SIR: I have your letter in reply to mine, and return many thanks. I am called home by wire on account of illness, else should have passed a day in Philadelphia. I cannot see where all will end, but trust that our interests will be protected as far as possible in your hands. We are in a very unpleasant position. Can you not now realize on the iron and raise money for us. You hold the iron for that purpose. Here-
542 tofore you claimed that there was no market, and if you have only borrowed fifty dollars per ton on it, you should either borrow more or sell, and aid us. Had you notified us that you had doubts about money we should have suspended earlier and saved ourselves.

We look to you, Mr. Moorhead, to make some move in our behalf or we may be forced to put the company into bankruptcy.

Do me the favor to speak with Mr. Lane, and state to him what you are going to do; and oblige me further by doing this at once. I go hence directly to St. Paul, and shall be glad to hear from you.

With many good wishes, I am yours, very truly,

WILLIAM CROOKS,
For DE GRAFF & CO.

EXHIBIT No. 34.

NEW YORK, *August* 31, 1872.

WILLIAM G. MOORHEAD, Esq'r,
Construction Agent:

DEAR SIR: As it is absolutely necessary to meet the June and July estimates for construction account of our St. Vincent line, amounting, in connection with freight and duties, to about $500,000, more or less, you are hereby authorized and empowered to borrow the same, or so
543 much thereof as may be necessary, on such terms as to you seem best, by hypothecating the iron rails now here, or that may arrive consigned to you as construction agent.

It is understood that you are acting in this matter as the friendly agent of all parties interested, and that in no event will you be held to any personal liability whatsoever.

Yours, truly,

GEORGE L. BECKER,
President First Division St. Paul and Pacific Railroad Company.

EXHIBIT No. 35.

PHILADELPHIA, *October 17th*, 1872.

DEAR RUSSELL: I have written Mr. Becker that I would authorize you to co-operate with him in selling and transferring the iron at Duluth (not otherwise appropriated) to Messrs. De Graff & Co., contractors; they to purchase the same at market price, giving receipt for same, to apply on the payment of estimates now due for work done and materials furnished to St. Paul & Pacific Railroad Company. This is for the benefit of contractors; the collector you will take care of. The
544 eight hundred tons sold to party in New York, on which I obtained the last money sent to Minnesota for payment of labor, must be undisturbed.

The freight due (about $33,000)—they (the transportation company) will hold the balance of iron not yet delivered until they are paid. I arranged with them to do so, as they always possess that right. My object is to place the balance in the hands of the contractors who need the security to enable them to raise money. I presume Mr. Becker, or Messrs. De Graff & Co., will call upon you; if the latter, they will have letter from Mr. Becker. Please arrange this as soon as your duties will permit.

Respectfully yours,

WILLIAM G. MOORHEAD,
Construction Agent.

EXHIBIT No. 36.—(Copy.)

PHILADELPHIA, *October* 17, 1872.

Hon. GEORGE L. BECKER, *President:*

DEAR SIR: I am in receipt of yours of the 11th inst., in which you urge the exchange of iron for five miles of your road. I would be pleased to arrange this if it can be accomplished. The iron at Duluth was promised to the contractors as security for their large advances. Now,
545 if you can arrange with them to take the iron you propose moving from the track at a fair price, and settling with them for the difference by cash, note of your company, or in any other way that will meet the case, I will be quite satisfied. This I presume you can do. The duties on the iron will also have to be paid before you can get it. I sent a bill of sale to Mr. Russell for the iron at Duluth in order to secure it from any other party. Now, as it is your wish, as well as mine, so far as the company can do it, I propose that you co-operate in this matter, and make a direct sale to them of all the iron not already pledged, for which they must give receipts to the purchasing agents, through you, as so much paid on account of estimates due them. You can, of course, at the same time, arrange for sufficient to meet those claims that you presented as due for labor, &c. I wish this iron could be sold for cash, and thus furnish money at once; but this cannot be done at present. The security will be good, and if an arrangement can be made for resuming work in the spring, the iron would have to be repurchased from the parties who will hold it.

546 I wrote Russell to transfer as you and DeGraff may decide upon. I send a bill of sale for the iron north of Glyndon, which can be held in same way and for same purpose.

Can we do otherwise than this under the circumstances? Is it not our duty to protect those who have become creditors of the company, and who reside on this side the Atlantic?

Respectfully yours,

(Signed) WILLIAM G. MOORHEAD,
Construction Agent.

EXHIBIT No. 37.

FIRST DIVISION ST. PAUL AND PACIFIC RAILROAD,
OFFICE No. 114 SOUTH THIRD STREET (UP STAIRS),
Philadelphia, 187 .

Received, December 27th, 1872, from the First Division of the St. Paul and Pacific Railroad Company, per William G. Moorhead, construction agent, two hundred and two thousand five hundred dollars ($202,500), in iron rails, to apply on estimates for work and materials, &c., due and owing to us as contractors of the St. Vincent and
547 Brainerd extensions of the said company's lines of road.

DEGRAFF & CO.,
Contractors.

EXHIBIT No. 38.

E. W. CLARK & CO., BANKERS,
Duluth, Minnesota, December 27, 1872.

WILLIAM G. MOORHEAD, Esq'r,
Philadelphia:

MY DEAR SIR: Your favor of 16th instant and telegram of that date came duly to hand. The telegram read as follows: "DeGraff & Co. to have balance of iron, after deducting eighteen hundred tons and amount in hands of transportation company, about three hundred tons. Write you." Your telegram of 17th also came to hand, as follows: "Price, seventy-five; complied with the conditions to resell to the company at same price, interest added, within five months from date." These telegrams came to me at Brainerd, and I went from there to St. Paul and saw DeGraff & Co., and, by appointment, Colonel Crooks came here last evening and closed the matter up. The iron on hand
548 consists of seventeen hundred tons at Glyndon and north of that point, ten hundred and thirty-nine tons at Duluth, after deducting eighteen hundred tons and three hundred and eighty-one tons held by the transportation company. DeGraff & Co. have taken the seventeen hundred tons at Glyndon and one thousand tons at Duluth on the conditions set forth in your letter and telegrams, and I enclose to you their receipt and agreement, which covers the whole transaction, and have delivered to them your bill of sale, having filled up the blank with the sum of $202,500 (the amount at seventy-five dollars per ton).

Colonel Crooks thought the rate of interest should be fixed at twelve per cent., but as no rate was mentioned by you I did not feel authorized to admit over seven per cent., and he yielded the point. I have retained copies of their receipts and agreement, but not of the bill of sale. In the schedule of the iron at Glyndon you had written "two hundred and fifty tons north of Glyndon." This I erased, as it was evidently an error, and so admitted by Colonel Crooks, and made the schedule read, "seventeen hundred tons at Glyndon and north of that."

I am to meet him at St. Paul next week in reference to the spikes, bars, and bolts. The authority to transfer these does not rest with me except as contained in your letter of the 16th instant.

I trust this will meet with your approval, and shall be glad to hear from you to that effect.

Yours, truly,

B. S. RUSSELL.

I also erased from the schedule in the bill of sale the words "and to arrive" after the name of Duluth, as a careful count of the rails and an examination of the books of the Northern Pacific Railroad showed an excess of over forty tons yet here.

We have had ten days of intensely cold weather, the mercury ranging all the time from twelve degrees below zero to thirty-two degrees below, not without any wind. In a warm position, at two o'clock p. m., one day, it stood at eight degrees below zero after the sun had been shining on it for three hours. Such weather precludes much out-door work. Men at work loading coal were obliged to stop, and the trains on the road are obliged to run light, and quite slow. It has moderated now, and I hope we shall not have any more as severe weather again this winter. I am almost entirely over the effect of my illness and hope to be all right very soon.

B. S. R.

EXHIBIT No. 39.

(Duplicate of Ex. 5.)

At a meeting of the board of directors of the First Division of the St. Paul & Pacific Railroad Company, held pursuant to a call by the president, at Minneapolis, Minnesota, August 7, 1871, on motion by Mr. Moorhead, it was—

Resolved, That the president abandon the survey via Long Prairie and put engineer force on line from St. Cloud via Alexandria.

Resolved, That the bid of Wallace & Co. for thirty-seven hundred and fifty dollars per mile for the construction of the Brainerd branch, so called, be accepted, and the president be instructed to make a contract with said parties for the immediate construction of said road, to be completed by the 1st of December, 1871, reserving, however, in said contract, the right on the part of the company to suspend said work, or progress with less rapidity with the same, whenever in their judgment the interest of the company may require it, the contractor giving such security as will be satisfactory to the president for the fulfillment of the contract.

(Signed) SAMUEL S. BREED,
Secretary.

EXHIBIT No. 39½.

Know all men by these presents, that the First Division of the St. Paul & Pacific Railroad Company, by William G. Moorhead, e'q'r, of Philadelphia, Pennsylvania, construction agent, duly constituted, empowered, and authorized by the board of directors of said company, a true copy of which power and authority, and attested by the said William G. Moorhead, is hereto attached, in consideration of the sum of $202,500 to me in hand paid by DeGraff & Co., of St. Paul, Minnesota, per account

of the said First Division of the St. Paul & Pacific Railroad Company, at and before the unsealing and delivery of these presents, the receipt whereof I do hereby acknowledge, have bargained, sold, released, granted, and confirmed, and by these presents do bargain, sell, release, grant, and confirm, unto the said DeGraff & Co. all the iron rails mentioned
552 in the following schedule, now remaining north of Glyndon, at or near the Pembina line of the said company's railroad, at Glyndon, and at Duluth, in the State of Minnesota, to have and to hold, all and singular all the said iron rails, and every of them, by these presents bargained, sold, released, granted, and confirmed unto the said De Graff & Co., to their only proper use and behoof, their heirs, executors, administrators, and assigns forever. In witness whereof the said the First Division of the St. Paul & Pacific Railroad Company, by William G. Moorhead, construction agent, has hereunto set its hand and seal this eighteenth day of October, 1872.

THE FIRST DIVISON OF THE ST. PAUL &
PACIFIC RAILROAD COMPANY.
WILLIAM G. MOORHEAD, *Construction Agent.*

Sealed and delivered in presence of—
J. PAUL DIVER,
GEORGE E. BENT.

Schedule of the iron rails mentioned in the foregoing bill of sale, to wit, seventeen hundred tons at Glyndon and north of Glyndon, in Minnesota; one thousand tons at Duluth, in Minnesota.

553 Copy of resolution of the First Division of the St. Paul and Pacific Railroad Company authorizing William G. Moorhead, construction agent, to pledge, hypothecate, sell, or dispose of the iron rails of said company.

Resolved, That William G. Moorhead, construction agent, be, and he is hereby, authorized to pledge, hypothecate, sell, or dispose of the iron rails of the company now in New York, or elsewhere, or hereafter to arrive, for such sums and upon such terms as are, in his judgment, best for the interests of this company, for the purpose of raising the money necessary to meet past and future estimates for the construction account St. Vincent and Brainerd extensions, and for duties, freights, and advances for same account.

The foregoing is a true copy of a resolution passed by the board of directors of the First Division of the St. Paul and Pacific Railroad Company, at a meeting held in Chicago, September 17th, 1872.

[COMPANY SEAL] GEORGE L. BECKER,
President.

Attest:
SAMUEL S. BREED,
Secretary.

554 EXHIBIT No. 40.

[George L. Becker, president. The First Division of the St. Paul & Pacific Railroad Company.]

PRESIDENT'S OFFICE,
St. Paul, November 30, 1871.

WILLIAM G. MOORHEAD, E'q'r,
Philadelphia:

MY DEAR SIR: In reply to your favor of the 22nd inst. on subject of St. Cloud bridge, I enclose the proposition of DeGraff & Co. to do the work at the prices named by you.

I consider myself authorized to make the contract at these figures, and shall close it, as no time should be lost in getting out the stone.

With reference to the two hundred feet span, Morris and Crooks unite in saying there need be no apprehension as to its strength and safety. DeGraff & Co. will contract that it shall bear a strain of two thousand pounds per foot. The timber will have to be cut on line of Lake Superior Road, and it is said to be of excellent quality. The contractors say they will guarantee the bridge.

Yours, respectfully,

GEORGE L. BECKER.

535 EXHIBIT No. 41.

ST. PAUL, *26th November*, 1871.

HON. GEORGE L. BECKER, *President:*

SIR: We will build your bridge across the Mississippi River, at or near St. Cloud, per items, as follows: For masonry, range of granite in hydraulic cement, eighteen (18) dollars per cubic yard. Foundations at price to be fixed by engineer. Superstructure, all spans of two hundred from centre to centre, iron clamps and keys, according to specifications of your chief engineer, at forty-two (42) dollars per lineal foot. All other spans at prices named in our contract, extending from St. Cloud to intersection of Northern Pacific Railroad, in the valley of Red River. Approaches of trestle work at prices named in above contract, as to iron, both wrought and cast, and forty (40) dollars per thousand for timber in the work. All to be done in accordance with the specifications of the chief engineer.

Yours, respectfully,

DEGRAFF & CO.

556 EXHIBIT No. 42.

(*Duplicate of Ex. No. 9.*)

George L. Becker, president; Samuel S. Breed, secretary. First Division St. Paul & Pacific Railroad Company.

GENERAL OFFICE,
St. Paul, October 27, 1871.

MR. GEORGE L. BECKER, *President:*

SIR: In reply to Mr. Moorhead's letter of October 23d, I would say:

First. That the accounts on new construction, that is to say, from St. Cloud to Brainerd and Pembina, are not entered upon the books of the company, but a new set of books have been opened, thus keeping all new construction entirely clear from the operative accounts of the company. The books have been opened in name of W. G. Moorhead, contractor. This is also a form. It does not make him responsible for any debts, neither is it intended to give him any profits; but as I understood it all the money necessary for the work here realized from the sale of the company's bonds issued for the construction of the Brainerd and Pembina lines comes through him, it would be necessary to have an account in his name, by which we could credit him with the proceeds of said drafts.

557 Second. The returns made me from the chief engineer's department up to this time made no division of the accounts, and con-

sequently all expenses up to the present show in the gross, covering all the lines. The divisions as stated by Mr. Moorhead, thus: "Brainerd Branch; First Division, Pembina line; Second Division, Pembina line," will be made.

Third. The credit of the $20,000, or $107,000, was made and left to Mr. Moorhead's account, waiting for instructions. The change will now be made. There will remain a balance due Mr. Litchfield from the Pembina and Brainerd account. Having used $40,000 of the proceeds of the draft on Mr. Wilmar for the settlement of the condemned property at the St. Paul levee, the question arises, who will settle for it? Shall it be credited to Mr. Litchfield, or will Mr. Moorhead make provision for it? I can straighten out all the transactions connected with the Brainerd and Pembina lines up to this time without very much trouble; but the work is growing rapidly, and soon will get beyond control. So it is absolutely imperative, if the accounts con-
558 nected with the construction of the Brainerd and Pembina lines are to be kept in this office, that we have full instructions of what is required of us in the keeping of said accounts.

If duplicate, vouchers, &c., are necessary, should know it at once.

Respectfully yours,

J. H. RANDALL,
Chief Clerk.

EXHIBIT No. 43.

W. G. Moorhead, construction agent, to Dr.

of

187		Amount.

Correct: Approved:

President.

Received 187, of W. G. Moorhead, construction agent, by the hand of Geo. L. Becker, president, dollars, in full payment of the above account.

559 EXHIBIT 45.

In the circuit court of the United States for the district of Minnesota.

JOHN S. KENNEDY, HENRY M. BAKER, AND John S. Barnes
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY, The St. Paul & Pacific Railroad Company, The First Division of the St. Paul & Pacific Railroad Company, and others. } In equity.

STATE & DISTRICT OF MINNESOTA, *ss:*

WILLIAM CROOKS, of St. Paul, in said State, being duly sworn, deposes and says that he is a member of the firm of De Graff & Co. mentioned

in the bill in this suit. That said firm of De Graff & Co. entered into three certain contracts in writing with William G. Moorhead, who was the construction agent of the First Division of the St. Paul & Pacific Railroad Company, and dated on the 2d day of October, 1871, and the other two dated October 5th, 1871, by which contracts said De Graff &
Co. agreed to construct the road-bed, including bridges, cul-
560 verts, and everything necessary for the track on the lines of the St. Paul & Pacific Railroad Company from Sauk Rapids to Brainerd, commonly known as the Brainerd extension, a distance of about sixty-one miles, and to furnish and lay the ties on the same and lay the track, and surface the same, and have the same completed on or before the 1st day of June, 1872; and also in like manner to construct the line of railroad and lay the iron thereon from St. Cloud to St. Vincent, a distance of three hundred and sixteen miles, and to have the same completed by the 3d day of March, 1873. That said First Division Company were, by said contracts, to furnish all iron rails, fastenings, frogs, switches, and spikes as the same should be needed in the progress of the work, and said contractors were to be paid on the 15th day of each month for the work done the previous month, less ten per cent. to be reclaimed as security for the performance of such contracts, the amount to be retained not to exceed for the Brainerd extension twenty thousand dollars, and on the other line one hundred thousand dollars, such payments to be made on the monthly estimates of the engineers of said company. That said con-
tractors were able, read*ing*, and willing to perform, and would
561 have performed, said contracts on their part within said times, but that after commencing work on said Brainerd extensions, very soon after making said contracts, said First Division Company, in the exercise of a power reserved to it in said contracts, ordered said De Graff and Co. to suspend work on such extensions, and said De Graff & Co. were not allowed by said company to resume said work until after June, 1872.

That said De Graff & Co. commenced work on said St. Vincent extension immediately after the making of said contracts, and continued the prosecution thereof until about October, 1872; and also after resuming the work on the Brainerd extension continued the same till October, 1872. That said First Division Company made payments for work done under said contracts up to the 30th of June, 1872, after which they failed to make any further payments upon estimates or otherwise, except as hereinafter stated; but that notwithstanding said failure said De Graff & Co. continued to prosecute said work under said contracts until about October 7th, 1872, as hereinbefore stated, under the constant assurance of said Moorhead and George L. Becker, the presi-
dent of said company, that money would be paid immediately;
562 but that instead of said payments said company, on or about October, 1872, gave said De Graff & Co. written notice to wholly suspend work on said extension lines. That at the time of said suspensions in October said company owed said De Graff & Co. for work done under said contracts, exclusive of the said ten per cent. retained, upwards of $684,000, and that the ten per cent. retained amounted to $120,000. That about the time of such suspension said company paid said De Graff & Co. $155,000 on accounts, which money said company raised, as said deponent was informed by said Moorhead, by hypothecating the iron rails which said company had purchased to construct said extension lines. In December, 1872, said First Division Company made a further payment to said De Graff & Co., on account of said work, of $50,000, which money said First Division Company raised by sale to

the Milwaukee & St. Paul Railway Company of iron rails purchased for the construction of said extensions, as deponent was informed by said Becker. That about the same time said Moorhead, under a resolution of the board of directors of said First Division Company, turned over to said De Graff & Co. 2,700 tons of iron rails, purchased
563 for such construction, at the price of $202,500, to be applied as a payment for said work.

That in addition to the amount due said *said* De Graff & Co. under the estimates of the engineer, there is also due them from said First Division Company the further amount of over $120,000 in work done but not included in such estimates, and for supplies furnished and money paid out at the request and upon the order of said First Division Company, all in connection with the work under said contracts; that there is a balance due said De Graff & Co. on account of the aforesaid matters, including interest to July 1, 1873, over $536,000 after deducting all of the said payments.

That said De Graff & Co. have at all times been prepared and ready and willing, in case the amounts so due them should be paid up, and future payments promptly made according to the terms of said contracts, to go on and complete the construction of said extension, and that by a provision in each of said contracts they have the right to complete such construction whenever the work is resumed; that said De Graff & Co. can complete such construction by the third day of December next, provided they could commence such work on the first day of August next, and provided the iron rails, &c., should be promptly fur-
564 nished as needed; that they now have on hand all the ties necessary to complete the entire extension, and have all the necessary bridge material now prepared and ready to be set up for the whole of said extensions, and all other facilities for doing the work within the time above specified, all said ties and bridge material never having been delivered to said First Division Company. That since the suspension of said work in October, 1872, the said First Division Company have not authorized said De Graff & Co. to resume said work, and have at all times refused to pay said balance due De Graff & Co., and have notified them that said company could not and would not go on with said work. That at the time of said suspension in October there had been the iron rails laid on 143½ miles of said extensions, as follows: On the Brainerd extension, 4½ miles, and on the St. Vincent extension, 35 miles, westward from St. Cloud; and from Glyndon, at the crossing of the Northern Pacific Railroad, northward 92 miles and southward 12 miles, leaving 237 miles to be ironed; of this 237 miles at least three-fourths is graded, ready for the ties, and that the balance of the grading is comparatively light work.

565 That deponent is, and has been since 1858, familiar with the country through which said St. Vincent extension runs, and that the lands to which said St. Paul and Pacific Railroad Company would become entitled by the completion of said extension by the 3d day of December are of a very superior quality, unsurpassed in richness and facility of cultivation by any lands in the State of Minnesota, and with said extension completed would be worth at least six dollars per acre. That deponent is familiar with the land-grant acts pertaining to said extensions, and that by the completion of such extensions by the 3d day of December next said Saint Paul Company would acquire about a million and a half of acres, which it will lose unless such extensions are completed by said date.

That the iron laid on said extensions was of the pattern of 88 tons to the mile, and would cost here about $90 per ton, making the whole cost of the iron laid $1,136,000, and that the cost of the balance of iron rails necessary to complete would be, at that rate per ton, $1,923,000, and that the cost of the fastenings, spikes, frogs, and switches, and other necessary appurtenances would be of a value of $2,500 per mile.

566 That deponent is a civil engineer by profession and has been connected with the construction of railroads in Minnesota since 1857; that the construction of said extension lines will add greatly to value of the branch line of the First Division St. Paul Company, and will also add largely to the value of the lands of the main line First Division St. Paul Company, by giving greater facilities for shipment of grain and farm produce to lands now upon the extreme eastern limits of the said main line grant. The present constructed portion of the said extension lines will be of little practical value unless the whole be completed, because of such portions being in separate and detached pieces and not accessible by any lines now owned and controlled by either the main or branch First Division of St. Paul Company, except the Northern Pacific Company, whose interests are antagonistic to said extension lines.

That a large portion of the land grant of the St. Paul & Pacific Company will fall to the Northern Pacific Company is said extensions are not completed by the 3d day of December next; and that said Northern Pacific Co. has the control and management of the First Division Company and the St. Paul & Pacific Company, and owns a con-

567 trolling interest in the stock of the same, and in the opinion and belief of deponent is managing said companies to the prejudice of the bondholders of said companies and of said roads, and in the interest of the Northern Pacific Company.

That the First Division Company has paid De Graff & Co. for work done by them and materials furnished under said contracts $1,458,572.86, and no more, including the 2,700 tons of iron rails hereinbefore mentioned.

WM. CROOKS.

Subscribed & sworn to before me, this 9th day of July, 1873.

[SEAL OF COURT.] H. E. MANN,
Clerk of said Court.

568 EXHIBIT 45.

State of Minnesota, in supreme court, April term, 1876.

CHARLES A. DEGRAFF ET AL., APPELLANTS,
against
ST. PAUL & PACIFIC R. R. CO. ET ALS., RESPONDENTS.

Paper book.

Gilman, Clough & Lane, att'ys for appellants.

Complaint.

STATE OF MINNESOTA, *Ramsey County:*

Court of common pleas.

CHARLES A. DEGRAFF, WILLIAM CROOKS, Nicholas DeGraff, plaintiffs,
against
THE ST. PAUL AND PACIFIC RAILROAD COMPANY, J. P. Farley, as receiver of certain of the property, rights, and franchises of the St. Paul & Pacific Railroad Company, and Horace Thompson, George L. Becker, and William G. Moorhead, as trustees in a certain indenture of mortgage heretofore made by the St. Paul & Pacific Railroad Company, defendants.

The plaintiffs, complaining of the defendants, allege the following facts constituting their cause of action: That the plaintiffs are, and for more than five years last passed have been, partners in business under the firm name of DeGraff & Co., and citizens of this State.

The defendant the St. Paul and Pacific Railroad Company
569 is a corporation created and organized under the laws of the late Territory and present State of Minnesota, and is authorized and empowered by such laws to construct, maintain, and use two several lines of railroads in this State, one extending from St. Cloud to St. Vincent, commonly known as the St. Vincent branch of the St. Paul and Pacific Railroad, and the other extending from Watab village to Brainerd, commonly known as the Brainerd Branch of the St. Paul and Pacific Railroad.

That by an act of Congress of the United States entitled "An act making a grant of lands to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of certain railroads in said State," approved March 3, 1857, and by a certain other act of Congress entitled "An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes," approved March 3, 1865, and by certain other act of Congress, entitled "An act authorizing the St. Paul and Pacific Railroad Company to change its lines in consideration of a relinquishment of lands," approved March 3, 1871,

there were granted by the United States to the Territory and State of Minnesota a large quantity of lands to aid in the construction of said lines of road of the defendant the St. Paul and Pacific Railroad Company. That prior to the passage of the act of legislature of this State hereinafter set forth, considerable parts of said lines of road, being about one hundred and forty miles in length in the aggregate, had been constructed and ironed and gotten ready for putting thereon the rolling-stock, but no part of the same has ever been put into actual operation, with trains of cars running regularly thereon.

570 That the State of Minnesota now holds, under the provisions of the said several acts of Congress, a large quantity of lands granted by said acts to aid in the construction of those portions of such lines of road constructed, ironed, and ready for the rolling-stock as aforesaid, amounting in the aggregate to about seven hundred thousand acres. That heretofore, to wit, on February 21, 1874, the legislature of this State passed an act in the words and figures as follows, that is to say:

"An act to secure the payment of certain debts contracted in the construction of certain lines of road of the St. Paul & Pacific Railroad Company."

Be it enacted by the legislature of the State of Minnesota:

SECTION 1. No lands now held, or that may hereafter be acquired or held, by the State to aid in the construction of the lines of railroad from Watab to Brainerd, and from St. Cloud to St. Vincent, or either of said lines, as now authorized to be constructed by the St. Paul & Pacific Railroad Company, for those portions of said railroads now ready for rolling-stock, shall be conveyed, certified over, or otherwise transferred by the State, or any of its officers, to the said railroad company, its successors or assigns, until payment is made of all debts and demands due to citizens of Minnesota heretofore contracted or incurred in connection with the construction of said lines of railroad, or any part thereof, including all debts and liabilities contracted or incurred for grading, clearing, bridges, timber, cross-ties, surfacing track, right of way, engineering, laying iron rails, and all other work and labor done and material furnished in the construction of said lines of railroad, or any part thereof; provided, however, that all such debts and claims shall be filed with the State auditor within sixty days after the passage of this act;

571 and provided further, that no debt or demand due to any other railroad corporation, their successors or assigns, shall be included within the provisions of this act.

SECTION 2. In case said debt or demands, or any thereof, are not paid within six months after the passage of this act, or if disputed within sixty days after the amount thereof shall have been determined by action or otherwise, then, and in such case, the governor is hereby authorized and directed to sell or cause to be sold at public sale, after giving six weeks' public notice of the time and place of such sale, the lands, or so much thereof as may be necessary, now held, or that may be hereafter acquired or held, by the State to aid in the construction of such lines of railroad so ready for rolling-stock, and apply the proceeds thereof in payment of said debts and demands; provided, that the claimants shall commence suit for the adjudication of said disputed claims within sixty days after the denial thereof by said company.

SECTION 3. Any act that may be passed extending the time for the completion of said lines of railroad, or either of them, or continuing, renewing, or making new or further grant of lands to aid in the construc-

tion of said lines of railroad, or either of them, shall be subject to the provisions of this act in respect to the lands aforesaid, and this act shall not be construed as repealed or modified by any subsequent act unless by express reference to the same and in direct terms.

SECTION 4. This act shall take effect and be in force from and after its passage.

Approved February 21, 1874.

That at the time of the passage of the said act of legislature the plaintiffs, as partners as aforesaid, were and have ever since been the
572 owners and holders of a debt and demand incurred before that time in connection with the construction of the said two lines of railroad, including the said constructed portion thereof, amounting in the aggregate to the sum of six hundred and sixty-four thousand four hundred and ninety-seven and 92-100 dollars ($664,497.92-100), with interest since September 26th, 1873, the grounds of which claim are as follows:

I.

For a first ground of claim, on or about October 2d, A. D. 1871, the said DeGraff & Co. duly made a contract for the construction of the line of road of the St. Paul & Pacific Railroad Company extending from Sauk Rapids village to Brainerd, commonly known as the Brainerd Branch, of which contract a true copy is hereto attached, marked Exhibit A; the William G. Moorhead mentioned in said contract as one of the parties hereto, and whose signature is affixed to the same, was at the time of the execution of said contract fully authorized by both the St. Paul & Pacific Railroad Company and the First Division of the St. Paul & Pacific Railroad Company to contract for the construction of said line of road, upon the terms in all things in said contract provided. After the making of said contract, and as soon as they were notified so to do, and some time in the month of October, A. D. 1871, the said DeGraff & Co., under and in pursuance of said contract, commenced the construction of said line of road, and continued faithfully and diligently to prosecute said work of construction, and to furnish materials therefor in all things according to the terms, specifications, and conditions of such contract, and did and performed all things by them to be done under such contract, and within the time
573 required, so far as permitted so to do by the said railroad companies and the said Moorhead.

Soon after the commencement of operations under said contract, the said DeGraff & Co. were notified by the said Moorhead, acting for himself and for said railroad companies, to suspend such operations, or reduce the prosecution thereof to a small force. Said DeGraff & Co. complied with said order, and continued the prosecution thereof with a small force until October, A. D. 1872, when they were notified by said Moorhead and by said railroad companies to entirely stop all work thereon, and they have never since been requested nor notified to resume operations upon said line; the work so done and material so furnished amounted in the aggregate, at the prices in and by said contract provided, to the sum of two hundred and three thousand thirty-seven and 07-100 dollars ($203,037 07-100). All such work done and materials furnished were duly estimated, on or about the first day of each month as the work progressed, by the chief engineer of the said railroad companies, and of the said Moorhead, and were thereupon accepted by

the said chief engineer as fulfillments to the extent thereof of the provisions of such contract, all which estimates were duly furnished to said DeGraff & Co. and to said Moorhead and said railroad companies forthwith upon their being made, and amounted in the aggregate to the sum above specified. Said estimates were severally and respectively made and furnished as aforesaid at the times, and were severally and respectively for the amounts following, that is to say:

October 1, 1871	$70,200 00
November 1, 1871	40,500 00
December 1, 1871	12,854 00
574 January 1, 1872	11,274 00
February 1, 1872	75,965 00
March 1, 1872	9,844 80
April 1, 1872	9,506 43
May 1, 1872	7,149 60
June 1, 1872	3,415 76
July 1, 1872	2,504 85
August 1, 1872	6,279 48
September 1, 1872	13,543 15

Payments upon said contract have been made in the sums and at the times following, that is to say:

December 16, 1871	$9,000 00
December 19, 1871	54,180 00
January 4, 1872	36,450 00
January 22, 1872	11,568 60
February 20, 1872	10,146 60
April 1, 1872	14,368 50
April 19, 1872	8,860 32
May 20, 1872	8,855 79
July 2, 1872	6,434 64
July 24, 1872	3,074 19

No payments upon work done or material furnished under said contract have been made except as above stated. The said DeGraff & Co. were at all times, after making of said contract, able, ready, willing, and prepared to complete the same within the time and in all respects as provided in said contract, if said contract had been performed on the part of said railroad companies and of said Moorhead, and the said DeGraff & Co. allowed to perform the same on their part. At the
575 request of the said railroad companies and the said Moorhead, the said DeGraff & Co. performed extra work upon said line of road not provided for by said contract, in constructing the excavations thereof to the width of eighteen (18) feet, which extra work was of the value of one thousand and eight hundred (1,800) dollars, no part of which has ever been paid.

II.

For a further ground of claim, on or about October 5th, A. D. 1871, the said DeGraff & Co. made a further contract for the construction of that part of the line of road of the St. Paul and Pacific Railroad Company running from St. Cloud to St. Vincent, commencing at the west end of the bridge spanning the Mississippi River at St. Cloud, and ter-

minating at a point one hundred and thirty (130) miles or thereabout from such point of beginning, being at the crossing of the Northern Pacific Railroad, of which agreement a true copy is hereunto attached marked Exhibit B.

And on or about the day last aforesaid simultaneously with the making of the contract last mentioned, and as a part of the same transaction, the said DeGraff & Co. made a further contract for the construction of the remaining part of said last mentioned line of road of the St. Paul and Pacific Railroad Company, commencing at the crossing of the Northern Pacific Railroad and extending to St. Vincent, a distance of two hundred (200) miles or thereabouts, a true copy of which agreement is hereunto attached, marked Exhibit C. The Wm. G. Moorhead mentioned in said two contracts as one of the parties thereto, whose signature is affixed to the same, was at the time of the execution of said con-
576 tracts fully authorized by both the St. Paul and Pacific Railroad Company and by the First Division of the St. Paul and Pacific Railroad Company, to contract for the construction of the said line of railroad embraced in said contracts, upon the terms in all things in said contract provided. After the making of the two last-mentioned agreements, and on or about November first, A. D. 1871, as to that one of which Exhibit B is a copy, and on or about May first, A. D. 1872, as to the one of which Exhibit C is a copy, the said DeGraff & Co., under and in pursuance of such contracts, commenced the construction of the two several portions of road therein described, and continued to faithfully and diligently prosecute such work of construction and to furnish materials therefor in all things in accordance with the several terms and conditions of said two contracts, and did and performed all and singular the things to be done under such contracts until on or about the month of October, A. D. 1872, when they were notified by the said Moorhead, acting on behalf of himself and of the said railroad companies, to stop work upon both and each of said portions of road, and said DeGraff & Co. did thereupon stop all work thereon, and have never since been requested or notified to resume such work. The work so done and materials so furnished by DeGraff & Co. amounted in the aggregate, at the prices in and by such contracts severally provided, to the sum of one million five hundred and eighty-three thousand one hundred and seven $\frac{21}{100}$ ($1,583,107.21-100) dollars. All such work done and materials furnished were duly estimated in single estimates, as to both such contracts, on or about the first day of each month as the same progressed, by the chief engineer of said Moorhead and of said railroad companies, and were thereupon ac-
cepted by the said engineer as fulfillments to the extent thereof
577 of the provisions of such contracts, all of which estimates were duly furnished to the parties forthwith upon their being made, and amounted in the aggregate to the sum last above specified. Such estimates were severally and respectively for the amounts and rendered at the times following, that is to say:

November 1, 1871	$14,236 88
December 1, 1871	55,168 62
January 1, 1872	77,458 15
February 1, 1872	92,531 12
March 1, 1872	67,490 20
April 1, 1872	48,763 65
May 1, 1872	220,175 50
June 1, 1872	337,926 82
July 1, 1872	219,577 30

August 1, 1872	247,491 95
September 1, 1872	149,281 77
November 1, 1872	53,005 25

Payments upon said two contracts have been made in the sums and at the times following, such payments being made upon said contracts indiscriminately, that is to say:

February 15, 1872	$4,263 20
January 22, 1872	49,651 76
February 19, 1872	77,407 34
March 16, 1872	81,101 46
April 19, 1872	60,741 18
May 16, 1872	32,871 78
May 20, 1872	11,015 51
June 17, 1872	150,000 00
June 22, 1872	10,000 00
578 July 2, 1872	38,157 95
July 16, 1872	100,000 00
July 17, 1872	50,000 00
July 24, 1872	145,000 00
July 31, 1872	9,134 13
October 1, 1872	100,000 00
October 15, 1872	55,000 00
December 1, 1872	50,000 00

DeGraff & Co. were at all times, after the making of said contracts, able, ready, and willing, and prepared to complete the same within the time, and in all respects as provided in said contracts, if said contracts had been performed on the part of said Moorhead and of said railroad companies, and DeGraff & Co. had been allowed to perform on their part. At the request of the said Moorhead, acting on behalf of himself and said railroad companies, DeGraff & Co. performed extra work in clearing and grubbing, and furnished extra materials for bridging in the construction of said line of road in said two contracts described, not contemplated by either of such contracts, to the amount and value of the sum of sixteen thousand three hundred and ninety-seven ($16,397) dollars, no part of which has ever been paid.

III.

Since January 1st, 1872, and before January 1st, 1874, DeGraff & Co., at the request of said Moorhead, acting on behalf of himself and of said railroad companies, furnished to the engineers in charge of the construction of the said line of railroad money and supplies to the
579 amount of three thousand three hundred sixty-nine and $\frac{33}{100}$ ($3,369.33-100) dollars, no part of which has ever been paid.

That within sixty days after the passage of the said act of legislature of the State of Minnesota of February 21st, 1874, and on the 27th day of March, 1874, these plaintiffs, in pursuance of the requirements of the said act, and to carry out the same, made and filed in the office of the State auditor in and for this State a statement of their said debt and demand, setting forth the particulars and the grounds thereof, as the same are hereinbefore set forth, and that said statement was filed in pursuance of the provisions of said act of legislature of February 21st, 1874, which statement has ever since remained on file in said office for the inspection of all parties interested. That after the filing of said

statement the defendant, J. P. Farley, caused to be served upon these plaintiffs a paper by him subscribed, in words and figures following, that is to say:

"To all whom it may concern, and particularly DeGraff & Co.:

"Take notice that the St. Paul & Pacific Railroad, through J. P. Farley, the receiver thereof, heretofore duly appointed as such by the circuit court of the United States for the district of Minnesota, hereby disputes and denies the demand and claim made and filed by C. A. DeGraff, William Crooks, and Nicholas DeGraff, partners as DeGraff & Co., with the State auditor of Minnesota on the twenty-seventh day of March, A. D. 1874, for the sum of $664,497\frac{92}{100}$, and each and every part of said demand and claims, and each and every part of the alleged indebtedness and liability therein referred to, and denies and disputes all claims, demands, and alleged indebtedness or liability pre-
580 ferred by said DeGraff & Co., or on their behalf, growing out of any contracts, or incurred in connection with the construction of the lines of said road, or any part thereof, referred to in an act of the legislature of the State of Minnesota entitled 'An act to secure the payment of certain debts contracted in the construction of certain lines of road of the St. Paul & Pacific Railroad Company,' approved February 21st, 1874, whether for debts or liabilities incurred or contracted for grading, bridges, timber, cross-ties, surfacing track, right of way, engineering, laying down iron rails, or other work or labor done or materials furnished, or otherwise, in the construction of said lines of railroads, or any part thereof.

"Dated St. Paul, April 17th, 1874.

(Signed) "J. P. FARLEY,
"*Receiver Saint Paul & Pacific R. R. Co.*

"I. V. D. HEARD,
"*Attorney for Receiver.*"

That the defendant, J. P. Farley, as the plaintiffs are informed and believe, was, on or about September 1st, 1873, appointed receiver of certain of the property, rights, and franchises of the said St. Paul and Pacific Railroad Company by the circuit court of the United States in and for the district of Minnesota, in an action then and still therein pending, wherein J. S. Kennedy and others are plaintiffs and the St. Paul and Pacific Railroad Company and others are defendants, and as such receiver claims some right to or interest in said lands held by the State as aforesaid; that heretofore, and some time in the year 1871, the said St. Paul and Pacific Railroad Company executed an indenture of mortgage of certain of its property, rights, and franchises to the defendants, Horace Thompson, George L. Becker, and William G. Moorhead,
581 as trustees, to secure the payment of certain bonds of the First Division of the St. Paul and Pacific Railroad Company, conditioned for the payment of money, and as such trustees, they, the said trustees, claim some right to and interest in the lands held by the State as aforesaid.

Wherefore the plaintiffs pray the judgment of the court determining for the purpose of securing to them the benefit of the provisions of the said act of legislature of February 21st, 1874, that at the time of the passage of said act the plaintiffs were the owners and holders of a debt and demand incurred in connection with the construction of the said lines of the railroad of the St. Paul and Pacific Railroad Company, and that the amount thereof at the time of the passage of said act was, and

still is, the sum of six hundred and sixty-four thousand four hundred and ninety-seven and $\frac{92}{100}$ ($664,497.92-100) dollars, with interest thereon since September 26th, 1873. And the plaintiffs pray for such other and further relief as to the court may seem meet.

GILMAN, CLOUGH & LANE,
Att'ys for Pl'ffs.

NOTE.

Exhibit A referred to in above complaint is Ex. No. 22 of this stipulation.
" B " " " " " " " " 23 " " "
" C " " " " " " " " 24 " " "

582 EXHIBIT 46.

STATE OF MINNESOTA,
County of Ramsey:

District court, second judicial district.

JESSE P. FARLEY, RECEIVER,
vs.
C. A. DE GRAFF & OTHERS.

Know all men by these presents that we, Charles A. De Graff, Nicholas De Graff, and William Crooks, as principals, and Bruno Beaupre, William Lee, Patrick H. Kelley, Horace Thompson, John L. Merriam, E. F. Drake, and J. C. Burbank, as sureties, are held and firmly bound unto the said Jesse P. Farley, as receiver of the Saint Paul and Pacific Railroad Company and plaintiff in the above-entitled action, in the penal sum of fifty thousand dollars, for the payment of which to the said Jesse P. Farley, as such receiver, his successors or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents, as witness our hands and seals this fourth day of August, 1875.

The condition of this obligation is such that whereas the said Farley, as such receiver, claims to be entitled to a certain quantity of railroad iron, to wit, one thousand tons, now lying at Duluth, and seventeen hundred tons, lying at Glyndon, in said State, and which said iron is
583 also claimed by the said C. A. De Graff, Nicholas De Graff, and William Crooks, partners as De Graff and Company; and said action is commenced to determine, among other things, the title of said De Graff and Co. to said iron, and an injunction has been obtained in said action restraining the said De Graff & Co., and each of them, from selling, removing, or interfering with said iron; and whereas there is a lien upon said one thousand tons of said iron at Duluth of sixteen thousand dollars for government duties thereon, and said iron is liable to be soon forfeited to the United States for the non-payment of the same; and whereas it is agreed that the present market value of said iron is fifty (50) dollars per ton, free of duties; and whereas the said De Graff & Co. have an opportunity to sell and desire to sell said one thousand tons of said iron, lying at Duluth as aforesaid, for the sum of thirty-four thousand dollars, subject to said lien thereon of sixteen thousand dollars of duties as aforesaid; and whereas said iron is liable to rust and depreciate intrinsically and in market value, and the said De Graff & Co. have applied, upon due notice to the court, for an order to have the

said iron sold for the benefit of all concerned, and the proceeds brought into court; and it has since been ascertained that said iron cannot be sold for cash; and whereas the said court has decided that if said injunction is allowed to stand as to such iron, a large increase in the bond as to such iron will be required; and whereas it has been agreed between the parties hereto that no amendments to the pleadings in said action, or the addition of other parties to the suit, or the transfer of the case to the United States circuit court, if all or any of the same should be done, or the right of said Farley to take this bond shall ever be urged against the validity hereof; and whereas it has since been agreed by and between the said Jesse P. Farley and the said De Graff & Co. that said injunction may be dissolved as to said one thousand tons at Duluth, claimed by said De Graff & Co.; and that said De Graff & Co. may sell and dispose of the same as their own, and pass all the title which they and the said Farley, as such receiver, have in and to the same, upon condition that the said De Graff & Co. execute a satisfactory bond to said Farley for the payment to him, his successors or assigns, of the sum of thirty-four thousand (34,000) dollars, in case it is finally determined in said action that said one thousand tons belongs to said Farley, as such receiver:

Now, therefore, if said injunction shall be dissolved as to said one thousand tons of iron at Duluth, claimed by said De Graff & Co., and said De Graff & Co. be permitted to sell and dispose of the same as their own, and it shall finally be decided in said action that said iron or the right of possession thereof belongs to the said Farley, as such receiver, and the said De Graff & Co. shall thereupon pay to the said Farley, as such receiver, his succes'ors or assigns, the said sum of thirty-four thousand dollars, then this obligation to be void; otherwise to be and remain in full force and effect.

This bond to be approved by the court, and the arrangement for the sale of the iron, as herein recited, to be sanctioned and approved by the court so far as relates to the action of said Farley therein, and such approval to be indorsed on this bond.

C. A. DE GRAFF.	[SEAL.]
NICHOLAS DE GRAFF.	[SEAL.]
WM. CROOKS.	[SEAL.]
BRUNO BEAUPRE.	[SEAL.]
WILLIAM LEE.	[SEAL.]
PATRICK H. KELLEY.	[SEAL.]
HORACE THOMPSON.	[SEAL.]
JOHN L. MERRIAM.	[SEAL.]
E. F. DRAKE.	[SEAL.]
J. C. BURBANK.	[SEAL.]

STATE OF MINNESOTA,
County of Ramsey, ss:

On this 4th day of August, A. D. 1875, personally came before the undersigned, a notary public in and for said county, Charles A. De Graff, William Crooks, Nicholas De Graff, Bruno Beaupre, William Lee, Patrick H. Kelly, Horace Thompson, John L. Merriam, E. F. Drake, and J. C. Burbank, the signers and sealers of the foregoing instrument, and each acknowledged that he executed the same voluntarily, for the uses and purposes therein set forth.

Witness my hand and official seal on the day and year above stated.

[NOTARIAL SEAL.] E. F. LANE,
Notary Public.

STATE OF MINNESOTA,
Ramsey County, ss:

On this 4th day of August, A. D. 1875, personally came before the undersigned, a notary public in and for said county, Bruno Beaupre, William Lee, Patrick H. Kelly, Horace Thompson, John L. Merriam, E. F. Drake, and J. C. Burbank, sureties in the foregoing bond,
587 and each being first duly sworn did depose that he is a resident and freeholder of this State, and worth the sum of fifty thousand dollars above debts, liabilities, and property exempt from levy and sale under execution.

B. BEAUPRE.
PATRICK H. KELLEY.
JOHN L. MERRIAM.
E. F. DRAKE.
HORACE THOMPSON.
J. C. BURBANK.

Subscribed and sworn to on this August 4th, A. D. 1875.
[NOTARIAL SEAL.] E. F. LANE,
Notary Public.

(Endorsed:) Ramsey County, Minnesota, dist. court, 2d dist. Jesse P. Farley, receiver, vs. De Graff & Co.

The within bond and sureties and arrangements recited in said bond approved by me, August 5, 1875.

W. WILKIN,
Dist. Judge.

Filed August 6th, 1875. Albert Armstrong, clerk.

588 STATE OF MINNESOTA,
Ramsey County:

I, Albert Armstrong, clerk of district court, Ramsey County and State of Minnesota, do hereby certify that I have compared the foregoing paper writing with the original bond in the action therein entitled, now remaining of record in my office, and that the same is a true and correct copy and transcript of said original, and the whole thereof.

Witness my hand and seal of said court, at St. Paul, this 9th day of August, A. D. 1875.

[SEAL OF COURT.] A. ARMSTRONG,
Clerk.

589 (Indorsed:) District court, Ramsey County. Jesse P. Farley vs. De Graff & Co. Certified copy of bond. Filed Sept. 6, 1877. H. E. Mann, clerk.

590 United States circuit court, district of Minnesota.

JESSE P. FARLEY, RECEIVER, &C.,
vs.
CHAS. A. DE GRAFF ET AL. } In equity.

Depositions of Henry Selby, witnesses of lawful age, produced, sworn, and examined before H. E. Mann, master and examiner in chancery of said court, on behalf of the plaintiff, commencing at o'clock in the noon, on the 8th day of December, A. D. 1876, at his office in the United States custom-house, in the city of Saint Paul, in said district.

Present, I. V. D. Heard, esq., solicitor for plaintiff; Wm. P. Clough, esq., solicitor for defendant.

591 DECEMBER 8TH, 1876.

HENRY SELBY, a witness sworn on the part of the plaintiff, testifies as follows:

I reside at Duluth, Minn.; I was collector of customs for the district of Duluth from April, 1872, to July 11th, 1876.

(Exhibit No. 1 shown witness.)

This exhibit shows the 1,000 tons of iron withdrawn for consumption by De Graff and Co. from the custom-house at Duluth, the vessels in which the iron arrived at New York, the time when the iron arrived at Duluth, the number of bars, and number of pounds in each cargo except the cargo of the "Clara and Cael," which cargo consisted of 1,404 bars, only 828 of which were taken by De Graff & Co., leaving 560 bars of such cargo still in the custom-house. The to'al contents of this cargo was 619,329 pounds, the contents of the 828 bars was 365,060 pounds, the contents of the quantity left was 254,269 pounds. A ton contains 2,240 pounds. This statement is copied from documents in the custom-house at Duluth which are now produced, true, examined copies marked Exhibits 2, 3, 4, as to first entry on Exhibit 1.

Exhibits 5, 6, 7, as to second entry in Exhibit 1.

Exhibits 8, 9, 10, as to third entry in Exhibit 1.

Exhibits 11, 12, 13, as to fourth entry in Exhibit 1.

592 As to this entry on Exhibit 1, these exhibits show 1,404 bars in the cargo of the "Clara and Cael," of which only 828 bars were withdrawn by De Graff & Co.

(Exhibit 14 shown witness.)

This exhibit shows the 1,860 tons of the Russell iron, the date of its rewarehouse at Duluth, the contents of the different cargoes, and other matters that appear thereon. This is the iron still held for custom duties.

This statement is compiled from documents in the custom house at Duluth which are now produced, true, examined copies marked Exhibits 15, 16, corresponding to entry marked No. 5 in Exhibit 14; corresponding to No. 11 on Exhibit 14 are Exhibits 17, 18; corresponding to entry No. 12 on Exhibit 14 are Exhibits 19, 20; corresponding to entry No. 13 on Exhibit 14 are Exhibits 21, 22; corresponding to entry No. 1 on Exhibit 14 are Exhibits 23, 24; entry No. 4 of Exhibit 14 is the cargo of the "Clara & Cael," after the De Graff & Co. withdrawal herein referred to.

(The counsel for the plaintiff states that this is the iron not disposed of by Moorhead.)

Corresponding to entry No. 2 on Exhibit 14 are Exhibits 25, 26; corresponding to entry No. 6 on Exhibit 14 are Exhibits 27, 28; corresponding to entry No. 7 on Exhibit 14 are Exhibits 29, 30; corresponding to entry No. 8 on Exhibit 14 are Exhibits 31, 32; corresponding to entry No. 13 on Exhibit 14 are Exhibits 33, 34; corresponding to entry No. 15 on Exhibit 14 are Exhibits 35, 36.

593 (Counsel for plaintiff states that this is the 1,060 tons of the iron claimed by one or more of the defendants to have been transferred to the Secretary of the Navy.)

This iron was on Rice's Point at Duluth at the time De Graff and Co. made the withdrawal mentioned.

Question. In delivering the De Graff iron or selecting it for withdrawal, how could you distinguish what portion of the contents of the cargo of the "Clara and Cael" belonged to De Graff & Co., when they only received a portion of the cargo?

Answer. I did not know that any portion of the cargo of the "Clara and Cael" belonged to De Graff & Co., particularly.

Question. Was there any way of telling what particular portion of this cargo, if it was divided up, belonged to any particular person?

Answer. There was not. All we had to do was to deliver to De Graff & Co. the 1,000 tons from the iron there.

Question. How was this iron kept there?

Answer. In separate piles as delivered by the lake boats; these boats are not the vessels alluded to previously in my testimony.

594 Question. Did any portion of the iron referred to by you in your testimony leave Duluth; and if so, where did it go, and when? I refer to the time previous to the De Graff withdrawal.

Answer. All the iron that left Duluth was shipped to Glyndon, except a certain amount that was seized and sold on execution and shipped to the transportation company.

Question. At the time De Graff & Co. made their withdrawal, how much of the iron described in Exhibits 1 and 14 was not at Duluth?

Answer. There was shipped to Glyndon 672 rails which had been shipped there by mistake in 1872, and it has been at Glyndon ever since; the balance was at Duluth.

Question. Was there a large quantity of iron at the custom-house at Duluth other than the iron referred to herein, designed for the St. Paul & Pacific Railroad Co. and consigned to Moorhead, shipped to Glyndon; and if so, prior to what time did it arrive at Duluth?

Answer. There was a large quantity of other iron similar to that in Exhibits 1 and 14 consigned to Moorhead, which arrived at Du-

595 luth and was shipped to Glyndon, and perhaps to Minneapolis; this iron arrived at Duluth prior to September, 1872, according to my best impression.

Question. How do you account for one of the cargoes on Exhibit 14 as arriving in 1873?

Answer. My impression is that this iron arrived in 1872; it was not rewarehoused through some mistake until August, 1873.

Question. Is it your best impression that all the iron that arrived at Duluth for Moorhead came before September 1, 1872?

Answer. The greater portion of it did, at any rate.

Question. While this iron was at Duluth, in what capacity, if any, in relation to the iron did the defendant Russell claim to act?

Answer. He acted as consignee and agent for W. G. Moorhead.

On cross-examination the witness testified:

All this iron that came to Duluth for Mr. Moorhead was imported from Great Britain. Upon its arrival to this country it came to the port of New York and sent from New York under transportation bond to Duluth. From the time of the arrival of this iron at New York and its entry for consumption at Duluth, and delivery to the assignee at this latter point, each cargo is kept separate from all other iron.

596 At any time after its arrival at Duluth, our business is conducted in such a way that we know to what cargo each bar of iron belongs. I was not interested in this iron in any other way than as customs' office, at Duluth. My only interest in the matter was to keep the iron safe until the duties were paid. Any transfer of the iron would not come under my notice. The iron is still piled up on Rice's Point at Duluth in separate piles. DeGraff's 1,000 tons have been separated and piled by themselves. Each of the piles represents the iron belonging to one particular cargo.

I forgot to state that a part of the iron mentioned in Exhibit 14 is now on the North. Pacific dock, where it was taken by Mr. Russell with a view of exporting it.

When a cargo is mentioned in these exhibits as arriving by different vessels, the vessels mentioned are the ocean vessels; the names of the lake vessels are not mentioned in my papers.

Being re-examined the witness*ed* testified:

The De Graff 1,000 tons was withdrawn by B. S. Russell, as assignee. The only way in which the 1,000 tons could be delivered to DeGraff & Co. was by breaking into the pile of the cargo of the "Clara and Cael."

On recross-examination the witness testified:

These piles of iron are in square piles in horizontal layers.

HENRY SELBY.

597 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, H. E. Mann, master and examiner in chancery of the circuit court of the United States of America for the district of Minnesota, do hereby certify that I was attended by the parties by their solicitors, at the times and place as stated in the caption and foregoing deposition, and by the said witness therein named, and that the said witness being of sound mind and lawful age, were each, before the commencement of the taking of his deposition, by me duly and publicly cautioned, and sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; and that the deposition as given was reduced to writing by Wm. A. Spencer, esq., by consent of said solicitor, in presence of such witness and said solicitors, and from the statements of the witness; and that the deposition of said witness when completed was carefully read over to such witness and subscribed by such witness in the presence of the said solicitors of the parties to said suit.

And I further certify that the exhibits returned with this deposition are the ones referred to therein, and that in the caption and said deposition is contained a complete record of all the proceedings before me at the time of the taking of the same.

In testimony whereof I have hereunto set my hand this 6th day of December, A. D. 1876.

H. E. MANN,
Master and Examiner in Chancery.

Fees: 1 day's attendance, $3.00; oaths to 1 witnesses, .10; 18 folios of testimony, 3.60; 36 exhibits certified, $9.00; total, 15.70.

598 (Indorsed:) United States circuit court, district of Minnesota: Jesse P. Farley et al. vs. Chas. A. De Graff et al. Depositions of witnesses on behalf of plaintiff, taken before H. E. Mann, master and examiner in chancery. Fees, $15.70. Exhibits, 1 to 36. Filed Feb. 28, 1877. H. E. Mann, clerk.

599 EXHIBIT No. 1.—*Statement of iron withdrawn by De Graff & Co.*

No. of bond.	No. of bars.	Arrival Duluth.	Vessel.	No. lbs.
(1872) 3	1785	Sept. 26, '72	Fraternitas	836,031
" 8	1239	" 30, '72	Tourist	550,037
(1873) 2	1122	Aug. 4, '73	Templar	488,872
4*	828	Sept. 27, '72	Clara and Cael	365,060
				2,240,000 lbs.

* This cargo consisted of		1,404 bars.
1,404 bars, quantity		619,329 lbs.
Deduct 828 "		366,060
576 bars. Quantity left of cargo still in custom-house		254,269

In a ton 2,240 lbs.

(Endorsed:) Exhibit No. 1. Filed Feb. 28, 1877. H. E. Mann, clerk.

600 *Rewarehousing entry.* R. W. B. 3.

DISTRICT AND PORT OF DULUTH,
Sept. 26th, 1872.

Entry of merchandise to be rewarehoused by B. S. Russell, consignee, which was originally imported into the port of New York by W. G. Moorhead, in the ship Fraternitas, from Cardiff, Eng., on the 14th day of May, 1872, and withdrawn from warehouse at port of New York, on 15 day' of May, 1872, for transportation to this district by (route or vessel) steamer & rail, and consigned to B. S. Russell.

Marks.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	1785	Bars railroad iron	836,031 lbs.	*a* 70c. p.	100 lb.	.....	.....	$15,313	$5,852.21

(Signed) B. S. RUSSELL, *Consignee.*

CUSTOM HOUSE SEAL, PORT OF DULUTH. I hereby certify that the above is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 20th, 1875.
(Signed) HENRY SELBY, *Collector.*

This iron was withdrawn by De Graff & Co.

601 I, B. S. Russell, do solemnly, sincerely, and truly swear, that the goods described in the entry now delivered by me to the collector of this district are the identical goods mentioned in a transportation entry made at the custom-house at New York by W. G. Moorhead on the 15th day of May, 1872, and that said goods are the same in quantity, quality, value, and package (wastage and damage excepted) as at the time of original transportation; so help me God.

Port of Duluth.
(Signed) B. S. RUSSELL.

Sworn to this 26 day of Sept., 1872, before me.
(Signed) HENRY SELBY, *Collector.*

(Indorsed:) R. W. B. 3. Rewarehousing entry. Importer, Wm. G. Moorhead. Vessel, Fraternitus. From Cardiff, Eng. Date Sept. 26, 1872. Exhibit' 2, 3, 4. Filed Feb. 28, 1877. H. E. Mann, clerk.

602 R. W. B. 3.
T. B. 1257.

Rewarehouse withdrawal entry for consumption.

DISTRICT AND PORT OF DULUTH, *May 14th*, 1875.

Entry of merchandise intended to be withdrawn for consumption by B. S. Russell, consignee, which was brought into this district on the 26 day of Sept., 1872, by (vessel & route) sch. E. Fitzgerald, from the port of Buffalo, having been originally imported into New York by Wm. G. Moorhead, in the ship Fraternitas, from Cardiff, Eng., on the day of 187 .

Marks.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total.	Dutiable value of each package.
	1785	Bars railroad iron	836,031 lbs.	@ 70c. p.	100 lbs.	less	10 %.	$5,266 99	$15,313 50
		Additional duty.	.....	.....	.....	10 %.	.....	526 70	
								$5,793 69	

(Signed) B. S. RUSSELL, *Consignee.*

CUSTOM HOUSE SEAL, PORT OF DULUTH. I hereby certify that the above is true copy of the original on file in this office.
Custom-house, Duluth, Dec. 20th, 1875.
HENRY SELBY, *Collector.*

603 (Indorsed:) No. 3. Rewarehouse withdrawal entry for consumption by B. S. Russell, consignee. May 14th, 1875. R. W. B. 3. Duty, $5,793.69. Exhibits 2, 3, 4. Filed Feb. 28, 1877. H. E. Mann, clerk.

604 *Rewarehousing bond.—Bond No.* 3.

U. S. CUSTOM HOUSE SEAL, PORT OF DULUTH. (On the margin:) I hereby certify that this is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 21st, 1875.
HENRY SELBY, *Collector.*

Cancelled. Duties paid. May 14th, 1875.

Know all men by these presents that we, B. S. Russell, ag't & att'y for W. G. Moorhead, as principals, and Charles H. Graves and C. G. Eddy, as sureties, are held and firmly bound unto the United States of America in the sum of ten thousand five hundred thirty-four (10,534) dollars, to be paid to the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Witness our hands and seals at the port of Duluth this 26th day of Sept., eighteen hundred and seventy-two.

Whereas certain goods, wares, and merchandise, consisting of 1,785 bars railroad iron, consigned to B. S. Russell, Duluth, were originally imported at the port of New York, in the ship Fraternitas, whereof is master, from Cardiff, Eng., on the 14 day of August, eighteen hundred and seventy-two;

And whereas the above-bounden principals have this day entered the same at the port of Duluth, under the laws of the United States providing for the warehousing of merchandise in bond as per warehouse

entry No. three, in which the said goods, wares, and merchandise are also described or set forth:

Now, therefore, the condition of the above obligation is such that if, within one year from the said date of original importation, the said goods, wares, and merchandise shall be regularly and lawfully withdrawn from public store or bonded warehouse on payment of the legal duties and charges to which they shall then be subject; or if, after the expiration of one year and within three years from the said date of original importation, they shall be so withdrawn upon the like payment with ten per centum added upon the amount of such duties and charges; or if, at any time within three years from the said date of original
605 importation, they shall be so withdrawn for actual export beyond the limits of the United States, then the above obligation to be void; otherwise to remain in full force.

(Signed) B. S. RUSSELL. [SEAL.]
CHAS. H. GRAVES. [SEAL.]
C. G. EDDY. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) E. G. RUSSELL.
E. C. JONES.

Bond No. 3.

Importer: WM. G. MOORHEAD. Vessel: FRATERNITAS.

CR. DR.

		Liquidations.		Duty..... $	5,266 99
	Deduct.		1873. May 14	Add. 10 %.....	526 70
Date.	Description of withdrawal.	Amount of duty.	Date.	Description of withdrawal.	Amount of duty.
1875. May 10.	For consumption..... By De Graff & Co.	5,793 69			5,793 69

(Indorsed:) Exhibits 2, 3, 4. Filed Feb. 28, 1877. H. E. Mann, clerk.

606 *Rewarehousing entry.* R. W. B. 8.

DISTRICT AND PORT OF DULUTH, *Sept. 30th*, 1872.

Entry of merchandise intended to be rewarehoused by B. S. Russell, consignee, which was originally imported into the port of New York by W. G. Moorhead, in the ship Tourist, from Cardiff, Eng., on the 22d day of August, 1872, and withdrawn from warehouse at port of New York on the 23d day of August, 1872, for transportation to this district by (route or vessel) steamers.

Marks.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	1239	Bars railroad iron.....	550,037 lbs.	@ 70c. p.	100 lbs.	less	10 %	$12,182	$3,465 24

(Signed) B. S. RUSSELL, *Consignee.*

{U. S. CUSTOM HOUSE SEAL, PORT OF DULUTH.} I hereby certify that the above is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 20th, 1875.
HENRY SELBY, *Collector.*

This iron was withdrawn by DeGraff & Co.

607 I, B. S. Russell, do solemnly, sincerely, and truly swear, that the goods described in the entry now delivered by me to the collector of this district are the identical goods mentioned in a transportation entry made at the custom-house at New York by Wm. G. Moorhead on the 23d day of August, 1872, and that said goods are the same in quality, quantity, value, and package (wastage and damage excepted) as at the time or original importation; so help me God.

Port of Duluth.
(Signed) B. S. RUSSELL.

Sworn to this 30 day of September, 1872, before me.
(Signed) HENRY SELBY, *Collector.*

(Indorsed:) R. W. B. 8. Rewarehousing entry. Importer, W. G. Moorhead. Vessel, Tourist. From Cardiff, Eng. Date Sept. 30th, 1872. Exhibits 5, 6, 7. Filed Feb. 28, 1877. H. E. Mann, clerk.

608 R. W. B. 8, T. B. 4003.

Rewarehouse withdrawal entry for consumption.

DISTRICT AND PORT OF DULUTH, *Aug. 21st*, 1875.

Entry of merchandise intended to be withdrawn from warehouse, for consumption, by B. S. Russell, consignee, which was brought into this district on the 30th day of September, 1872, by (vessel or route) A. D. & P. S. S. Line, from the port of Buffalo, having been originally imported into New York by Wm. G. Moorhead, in the ship Tourist, from Cardiff, Eng., on the 22d day of August, 1872.

Marks.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	1, 239	Bars railroad iron.....	550, 037 lbs.	*a* 70c. p.	100 lbs	less	10 %	$12, 182	$3, 465 24 346 52
									$3, 811 76

(Signed.) B. S. RUSSELL, *Consignee.*

{U. S. CUSTOM-HOUSE SEAL, PORT OF DULUTH.} I hereby certify that the above is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 20, 1875.
HENRY SELBY, *Collector.*

609 (Indorsed:) No. 5. Rewarehouse withdrawal entry, for consumption, by B. S. Russell, consignee. August 21st, 1875. R. W. B. 8. Duty, $3,811.76. Exhibits 5, 6, 7. Filed Feb. 28, 1877. H. E. Mann.

610 *Rewarehousing bond.—Bond No. 8.*

Know all men by these presents that we, B. S. Russell, ag't & att'y for W. G. Moorhead, as principals, and Charles H. Graves and C. G. Eddy, as sureties, are held and firmly bound unto the United States of America in the sum of six thousand nine hundred thirty (6,930) dollars, to be paid to the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Witness our hands and seals, at the port of Duluth, this 30 day of September, eighteen hundred and seventy-two.

Whereas certain goods, wares, and merchandise, consisting of 1,239 bars railroad iron, consigned to B. S. Russell, Duluth, were originally imported at the port of New York, in the ship Tourist, whereof is master, from Cardiff, Eng., on the 22d day of August, eighteen hundred and seventy-two;

And whereas the above-bounden principals have this day entered the same at the port of Duluth, under the laws of the United States providing for the warehousing of merchandise in bond, as per warehouse entry number eight, in which said goods, wares, and merchandise are also described or set forth:

Now, therefore, the condition of the above obligation is such that if, within one year from the said date of original importation, the said goods, wares, and merchandise shall be regularly and lawfully withdrawn from public store or bonded warehouse, on payment of the legal duties and charges to which they shall then be subject; of if, after the expiration of one year and within three years from the said date of original importation, they shall be so withdrawn, upon the like payment, with ten per centum added upon the amount, of such duties and charges; or if, at any time within three years from the said date of original importation, they shall be so withdrawn for actual export beyond the limits of the United States, then the above obligation to be void; otherwise to remain in full force.

(Signed) B. S. RUSSELL. [SEAL.]
CHAS. H. GRAVES. [SEAL.]
C. G. EDDY. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) E. G. RUSSELL.
E. C. JONES.

{U. S. CUSTOM-HOUSE SEAL, PORT OF DULUTH.} (On margin:) I hereby certify that this is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 21st, 1875.
HENRY SELBY, *Collector.*

Cancelled. Duties paid. Aug. 21st, 1875.

611 *Bond No. 8.*

Importer: WM. G. MOORHEAD. Vessel: TOURIST.

CR. DR.

		Liquidations.		Duty.....	$3,465 24
	Deduct.		1873. Aug. 22d.	Add 10 %.....	346,52
Date	Description of withdrawal.	Amount of duty	Date.	Description of withdrawal.	Amount of duty.
1875 Aug 21	For consumption..... By De Graff & Co.....	.....	.....	.....	$3,811 76

(Indorsed:) Exhibits 5, 6, 7. Filed Feb. 28, 1877. H. E. Mann, clerk.

612 *Rewarehousing entry.* R. W. B., 3070.

DISTRICT AND PORT OF DULUTH, *Aug. 4th*, 1873.

Entry of merchandise intended to be rewarehoused by B. S. Russell, consignee, which was originally imported into the port of New York by Wm. G. Moorhead, in the ship Templar, from Cardiff, Eng., on the 21 day of June, 1872, and withdrawn from warehouse at port of New York, on the 22 day of June, 1872, for transportation to this district by (route or vessel) steamer, and consigned to B. S. Russell.

Marks.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	1122	Bars railroad iron.....	488, 872	*a* 70 c. p.	100 lbs.	.....	.....	$9, 519	$3, 422 10

(Signed) B. S. RUSSELL, *Consignee.*

{U. S. CUSTOM-HOUSE SEAL, PORT OF DULUTH.} I hereby certify that the above is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 20 h, 1875.
HENRY SELBY, *Collector.*

This iron was withdrawn by De Graff & Co.

613 I, B. S. Russell, do solemnly, sincerely, and truly swear that the goods described in the entry now delivered by me to the collector of this district are the identical goods mentioned in a transportation entry made at New York by Wm. G. Moorhead, on the 22d day of June, 1872, and that said goods are the same in quality, quantity, value, and package (wastage and damage excepted) as at the time of original importation: so help me God.

Port of Duluth.
(Signed) B. S. RUSSELL.

Sworn to, this 4 day of Aug., 1873, before me.
(Signed) HENRY SELBY, *Collector.*

(Indorsed:) R. W. B. 2. Rewarehousing entry. Importer, Wm. G. Moorhead. Vessel, Templar. From Cardiff, Eng. Date Aug. 4, 1873. Exhibits 8, 9, 10. Filed Feb. 28, 1877.

H. E. MANN, *Clerk.*

614 R. W. B. 2, T. B. 3007.

Rewarehouse withdrawal entry for consumption.

DISTRICT AND PORT OF DULUTH, *June 21st*, 1875.

Entry of merchandise intended to be withdrawn from warehouse, for consumption, by B. S. Russell, consignee, which was brought into this district on the 4th day of August, 1873, by (vessel or route) A. D. & P. S. S. Line, from the port of Buffalo, having been originally imported into New York by Wm. G. Moorhead, in the ship Templar, from Cardiff, Eng., on the 21st day of June, 1872.

Marks.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	1,122	Bars railroad iron.....	488,872 lbs.	@ 70 c.p.	100 lbs.	less	10 %	$9,519 00	$3,079 89
		Additional duty.....	.....	.....		10 %	.....	.....	307 99
									$3,387 88

(Signed) B. S. RUSSELL, *Consignee.*

U. S. CUSTOM-HOUSE SEAL, PORT OF DULUTH. I hereby certify that the above is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 20th, 1875.
HENRY SELBY, *Collector.*

615 (Indorsed:) No. 4. Rewarehouse withdrawal entry, for consumption, by B. S. Russell, consignee. June 21st, 1875. R. W. B. 2. Duty, $3,387.88. Exhibits 8, 9, 10. Filed Feb. 28, 1877. H. E. Mann, clerk.

616 *R'warehousing bond.—Bond No. 2.*

Know all men by these presents that we, B. S. Russell, ag't and att'y for W. G. Moorhead, as principals, and J. Q. Adams and Hiram Robbins, as sureties, are held and firmly bound unto the United States of America in the sum of sixty-eight hundred and fifty (6,850) dollars, to be paid to the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Witness our hands and seals, at the port of Duluth, this 4th day of August, eighteen hundred and seventy-three.

Whereas certain goods, wares, and merchandise, consisting of 1,122 bars railroad iron, consigned to B. S. Russell, Duluth, were originally imported at the port of New York, in the ship Templar, whereof is master, from Cardiff, Eng., on the 21st day of June, eighteen hundred and seventy-two;

And whereas the above-bounden principals have this day entered the same at the port of Duluth, under the laws of the United States providing for the warehousing of merchandise in bond, as per warehouse entry No. 2, in which the said goods, wares, and merchandise are also described or set forth:

Now, therefore, the condition of the above obligation is such that if, within one year from the said date of original importation, the said goods, wares, and merchandise shall be regularly and lawfully withdrawn from public store or bonded warehouse, on payment of the legal duties and charges to which they shall then be subject; or if, after the expiration of one year and within three years from the said date of original importation, they shall be so withdrawn, upon the like payment, with ten per centum added upon the amount, of such duties and charges; or if, at any time within three years from the said date of original importation, they shall be so withdrawn for actual export beyond the limits of the United States, then the obligation to be void; otherwise to remain in full force.

(Signed) B. S. RUSSELL. [SEAL.]
Ag't and Att'y for W. G. Moorhead.
J. Q. ADAMS. [SEAL.]
HIRAM ROBBINS. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) HENRY SELBY,
MAURICE H. BYWATER.

U. S. CUSTOM-HOUSE SEAL, PORT OF DULUTH. (On the margin:) I hereby certify that this is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 21st, 1875.
HENRY SELBY, *Collector.*

Cancelled. Duties paid. June 21st, 1875.

617 *Bond No.* 2.

Importer: WM. G. MOORHEAD. Vessel: TEMPLAR.

CR.					DR.
		Liquidations.		Duty.....	$3,422 10
1872.	Deduct.		1873.	Add.	
Aug. 10.	10 10%.....	342 21	June 21.	10%.....	307 99
Date.	Description of withdrawal.	Amount of duty.	Date.	Description of withdrawal.	Amount of duty.
1875. June 21.	For consumption..... By De Graff & Co.....	3,387 88	.....	.....	3,387 88

(Indorsed:) Exhibits 8, 9, 10. Filed Feb. 28, 1877. H. E. Mann, clerk.

618 *Rewarehousing entry.* R. W. B. 4.

DISTRICT AND PORT OF DULUTH, *Sept. 27th*, 1872.

Entry of merchandise intended to be rewarehoused by B. S. Russell, consignee, which was originally imported into the port of New York by W. G. Moorhead, in the ship Clara and Carl, from Cardiff, Eng., on the 26th day of August, 1872, and withdrawn from the warehouse at port of New York, on the 27th day, 1872, for transportation to this district by (route or vessel) steamer, and consigned to B. S. Russell.

Marks.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	1404	Bars railroad iron	619,329 lbs.	a 70c. p.	100 lbs.	less	10 %	$10,975	3,901 77

(Signed) B. S. RUSSELL, *Consignee.*

{ CUSTOM-HOUSE SEAL, PORT OF DULUTH. } I hereby certify that the above is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 20th, 1875.
HENRY SELBY, *Collector.*

828 bars, 365,060 lbs., of this entry withdrawn by De Graff & Co., Aug. 26th, 1875. Remaining in warehouse, 576 bars, 254,269 lbs. See statement.

619 I, B. S. Russell, do solemnly, sincerely, and truly swear that the goods described in the entry now delivered by me to the collector of this district are the identical goods mentioned in a transportation entry made at the custom-house at New York by Wm. G. Moorhead, on the 27 day of August, 1872, and that said goods are the same in quality, quantity, value, package (wastage and damage excepted) as at the time of original importation: so help me God.

Port of Duluth.

(Signed) B. S. RUSSELL.

Sworn to, this 27 day of Sept., 1872, before me.

(Signed) HENRY SELBY, *Collector.*

(Indorsed:) R. W. B. 4. Rewarehousing entry. Importer, W. G. Moorhead. Vessel, Clara and Carl. From Cardiff, Eng. Date Sept. 27, 1872. Exhibits 11, 12, 13. Filed Feb. 28, 1877. H. E. Mann, clerk.

620 R. W. B. 4, T. B. 4017.

Rewarehouse withdrawal entry for consumption.

DISTRICT AND PORT OF DULUTH, *Aug. 26th*, 1875.

Entry of merchandise intended to be withdrawn from warehouse, for consumption, by B. S. Russell, consignee, which was brought into this district on the 27 day of Sept., 1872, by (vessel or route) A. D. & P. S. S. Line, from the port of Buffalo, having been originally imported into New York by Wm. G. Moorhead, in the ship Clara and Carl, from Cardiff, Eng., on the 26th day of August, 1872.

Mark.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	828	Bars railroad iron.....	365,060 lbs.	@ 70c. p.	100 lb.	less	10 %	$6,458	$2,299 88
		Additional duty.....	.....	.....	.....	10 %	.....	.....	229 99
									$2,529 87

(Signed) B. S. RUSSELL, *Consignee.*

{U. S. CUSTOM-HOUSE SEAL, PORT OF DULUTH.} I hereby certify that the above is a true copy of the original on file in this office. Custom-house, Duluth, Dec. 20th, 1875.

(Signed) HENRY SELBY, *Collector.*

621 (Indorsed:) No. 6. Rewarehouse withdrawal entry, for consumption, by B. S. Russell, consignee. August 26th, 1875. R. W. B. 4. Duty, $2,529.87. Exhibits 11, 12, 13. Filed Feb. 28, 1877. H. E. Mann, clerk.

622 *Rewarehousing bond.—Bond No. 4.*

Know all men by these presents that we, B. S. Russell, ag't and att'y for W. G. Moorhead, as principals, and Charles H. Graves and C. G. Eddy, as sureties, are held and firmly bound unto the United States of America in the sum of six thousand eight hundred four dollars (6,804), ot be paid to the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Witness our hands and seals, at the port of Duluth, this 27 day of September, eighteen hundred and seventy-two.

Whereas certain goods, wares, and merchandise, consisting of 1,404 bars railroad iron, consigned to B. S. Russell, Duluth, were originally imported at the port of New York, in the ship Clara and Carl, whereof is master, from Cardiff, Eng., on the 26 day of August, eighteen hundred and seventy-two;

And whereas the above-bounden principals have this day entered the same at the port of Duluth, under the laws of the United States providing for the warehousing of merchandise in bond, as per warehouse entry number 4, in which the said goods, wares, and merchandise are also described or set forth:

Now, therefore, the condition of the above obligation is such that if, within one year from the said date of original importation, the said goods, wares, and merchandise shall be regularly and lawfully withdrawn from public store or bonded warehouse, on payment of the duties and charges to which they shall then be subject; or if, after the expiration of one year and within three years from the said date of original importation, they shall be so withdrawn, upon the like payment, with ten per centum added upon the amount, of such duties and charges;

or if, at any time within three years from the said date of original importation, they shall be so withdrawn for actual export beyond the limits of the United States, then the above obligation to be void; otherwise to remain in full force.

(Signed) B. S. RUSSELL.
CHAS. H. GRAVES.
C. G. EDDY.

Signed, sealed, and delivered in the presence of—
(Signed) E. G. RUSSELL,
E. C. JONES.

{U. S. CUSTOM-HOUSE SEAL, PORT OF DULUTH.} I hereby certify that the above is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 21st, 1875.
HENRY SELBY, *Collector*.

623 *Bond No.* 4.

Importer: WM. G. MOORHEAD. Vessel: CLARA AND CARL.

CR. DR.

		Liquidations.		Duty	$3,901 77
	Deduct.		1873. Aug. 26	Add. 10 %.....	390 17
Date.	Description of withdrawal.	Amount of duty.	Date.	Description of withdrawal.	Amount of duty.
1875. Aug. 26.	For consumption..... By De Graff & Co.	2,529 87	.....	.....	4,291 94

(Indorsed:) Exhibit 11, 12, 13. Filed Feb. 28, 1877. H. E. Mann, clerk.

624 Part V, No. 96.

Statement of railroad iron in warehouse at the close of the month of November, 1875, showing the number and date of bond, name of principal, when due, description of merchandise, value, duty, and the balance due on bond.

Bond No.	Date.	When due.	Principal.	Description of merchandise.	Value.	Duty.	Due on bond.
	1872.						
Re W. B. No. 2	Sept. 23	.....	B. S. Russell, ag't & att'y.	448,000 lbs. railroad iron.	10,175	2,898 40	2,822 40
4	27	.....	"	254,269	4,517	1,601 89	1,601 86
5	30	.....	"	612,900	13,913	3,861 27	3,861 27
6	"	.....	"	224,000	4,168	1,411 20	1,411 20
7	"	.....	"	403,200	8,036	2,540 16	2,541 16
9	Oct. 3	.....	"	224,000	4,169	1,411 20	1,411 20
11	4	.....	"	389,810	8,848	2,455 81	2,455 81
12	"	.....	"	612,724	13,909	3,860 16	3,860 68
13	12	.....	"	201,600	4,579	1,270 08	1,270 16
14	"	.....	"	252,230	5,725	1,589 05	1,589 05
15	"	.....	"	224,000	4,465	1,411 20	1,411 20
	1873.						
1	Aug. 4	.....	"	321,160	7,289	2,023 30	2,023 30
					$89,793	$26,257 72	$26,257 72

This is the iron held by Mr. B. S. Russell, still in warehouse, advertised to be sold.

HENRY SELBY, *Collector*.

DISTRICT OF ,
Collector's Office, , 18.

625 (Indorsed:) Form No. 96. District of , , collector, , 18 . Statement of merchandise in warehouse at the close of the month of , 18 , showing number, date of bond, name of principal, when due, description of merchandise, value, duty, and the balance due on bond. Exhibit 14. Filed Feb. 28th, 1877. H. E. Mann, clerk.

626 *Rewarehousing entry.* R. W. B. 5.

DISTRICT AND PORT OF DULUTH, *Sept. 30th*, 1872.

Entry of merchandise intended to be rewarehoused by B. S. Russell, consignee, which was originally imported into the port of New York by W. G. Moorehead, in the ship Mary Loweriser, from Cardiff, Eng., on the 20th day of August, 1872, and withdrawn from warehouse at port of New York, on the 29th day of August, 1872, for transportation to this district by (route or vessel) steamers, and consigned to B. S. Russell.

Marks.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	1381	Bars railroad iron.....	612,900 lbs.	*a* 70c. p.	100 lbs	less	10 %	$13,913 83	$3, 861 27

(Signed) B. S. RUSSELL, *Consignee.*

I hereby certify that the above is a true copy of the original on file in this office.

Custom-house, Duluth, Dec. 20th, 1875.

HENRY SELBY, *Collector.*

627 I, B. S. Russell, do solemnly, sincerely, and truly swear that the goods described in the entry now delivered by me to the collector of this district are the identical goods mentioned in a transportation entry made at the custom-house at New York by Wm. G. Moorhead, on the 29 day of August, 1872, and that said goods are the same in quality, quantity, value and package (wastage and damage excepted) as at the time or original importation: so help me God.

Port of Duluth.

(Signed) B. S. RUSSELL.

Sworn to, this 30th day of Sept., 1872, before me.

(Signed) HENRY SELBY, *Collector.*

(Indorsed:) R. W. B. 5. Rewarehousing entry. Importer, Wm. G. Moorhead. Vessel, Mary Loweriser. From Cardiff, Eng. Date Sept. 30th, 1872. Exhibits 15, 16. Filed Feb. 28, 1877. H. E. Mann, clerk.

628 *Rewarehousing bond.—Bond No. 5.*

Know all men by these presents that we, B. S. Russell, ag't & att'y for W. G. Moorhead as principals, and Charles H. Graves and C. G. Eddy, as sureties, are held and firmly bound unto the United States of America in the sum of seven thousand seven hundred twenty-three

(7,723) dollars, to be paid to the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Witness our hands and seals at the port of Duluth, this 30th day of September, eighteen hundred and seventy-two;

Whereas certain goods, wares, and merchandise, consisting of 1,381 bars railroad iron, consigned to B. S. Russell, Duluth, were originally imported at the port of New York, in the ship Mary Loweriser, whereof is master, from Cardiff, Eng., of the 28 day of August, eighteen hundred and seventy-two;

And whereas the above-bounden principals have this day entered the same at the port of Duluth, under the laws of the United States providing for the warehousing of merchandise, in bond, as per warehouse entry No. 5, in the said goods, wares, and merchandise are also described or set forth:

Now, therefore, the condition of the above obligation is such that if, within one year from the said date of original importation, the said goods, wares, and merchandise shall be regularly and lawfully withdrawn from public store or bonded warehouse, on payment of the legal duties and charges to which they shall then be subject; or if, after the expiration of one year and within three years from the said date of original importation, they shall be so withdrawn, upon the like payment, with ten per centum added upon the amount, of such duties and charges; or if, at any time within three years from the said date of original importation, they shall be so withdrawn for actual export beyond the limits of the United States, then the above obligation to be void; otherwise to remain in full force.

(Signed) B. S. RUSSELL. [SEAL.]
CHAS. H. GRAVES. [SEAL.]
C. G. EDDY. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) E. G. RUSSELL,
E. C. JONES.

{CUSTOMS SEAL, PORT OF DULUTH.} I hereby certify that the above is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 21st, 1875.
HENRY SELBY, *Collector*.

629 *Rewarehousing bond.—Bond No. 5.*

Importer: WM. G. MOORHEAD. Vessel: TOURIST.

CR. DR.

		Liquidations.		Duty.....	$3,861 27
	Deduct.		1873. Aug. 28	Add. 10%.....	386 12
Date.	Description of withdrawal.	Amount of duty.	Date.	Description of withdrawal.	Amount of duty.
					4,247 39

(Indorsed:) Exhibit' 15, 16. Filed Feb. 28, 1877. H. E. Mann, clerk.

630 *Rewarehousing entry.* W. B., 4019.

DISTRICT AND PORT OF DULUTH, *October 4th*, 1872.

Entry of merchandise intended to be rewarehoused by B. S. Russell, consignee, which was originally imported into the port of New York by Wm. G. Moorhead, in the ship Lidskgolf, from Cardiff, Eng., on the 26th day of August, 1872, and withdrawn from warehouse at port of New York, on the 27th day of August, 1872, for transportation to this district by (route or vessel) steamers, and consigned to B. S. Russell.

Marks.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	877	Bars railroad iron	389, 810 lbs.	a 70c. p.	100 lbs.	less	10%	$8, 848	$2, 455 81

(Signed) B. S. RUSSELL, *Consignee.*

{U. S. CUSTOM-HOUSE SEAL, PORT OF DULUTH.} I hereby certify that the above is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 20th, 1875.
HENRY SELBY, *Collector.*

631 I, B. S. Russell, do solemnly, sincerely, and truly swear that the goods described in the entry now delivered by me to the collector of this district are the identical goods mentioned in a transportation entry made at the custom-house at New York by Wm. G. Moorhead, on the 27th day of August, 1872, and that said goods are the same in quality, quantity, value, and package (wastage and damage excepted) as at the time or original importation: so help me God.

Port of Duluth.
(Signed) B. S. RUSSELL.

Sworn to, this 4th day of October, 1872, before me.
(Signed) E. C. JONES,
Deputy Collector.

(Indorsed:) R. W. B. 11. Rewarehousing entry. Importer, Wm. G. Moorhead. Vessel, Lidskgolf. From Cardiff, Eng. Date Oct. 4, 1872. Exhibit' 17, 18. Filed Feb. 28th, 1877. H. E. Mann, clerk.

632 *Rewarehousing bond.—Bond No.* 11.

Know all men by these presents that we, B. S. Russell, ag't and att'y for W. G. Moorhead, as principals, and Charles H. Graves and A. J. Sawyer, as sureties, are held and firmly bound unto the United States of America in the sum of five thousand four hundred and fifty-seven (5,457) dollars, to be paid to the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Witness our hands and seals, at the port of Duluth, this 4 day of October, eighteen hundred and seventy-two.

Whereas certain goods, wares, and merchandise, consisting of 877 bars railroad iron, assigned to B. S. Russell, Duluth, were originally imported at the port of New York, in the ship Lidskgolf, whereof is master, from Cardiff, Eng., on the 26th day of August, eighteen hundred and seventy-two;

And whereas the above-bounden principals have this day entered the same at the port of Duluth, under the laws of the United States providing for the warehousing of merchandise in bond, as per warehouse entry No. 11, in which the said goods, wares, and merchandise are also described or set forth;

Now, therefore, the condition of the above obligation is such that if, within one year from the said date of original importation, the said goods, wares, and merchandise shall be regularly & lawfully withdrawn from public store or bonded warehouse, on payment of the legal duties and charges to which they shall then be subject; or if, after the expiration of one year, and within three years from the said date of original importation, they shall be so withdrawn, upon the like payment, with ten per centum added upon the amount, of such duties and charges; or if, at any time within three years from the said date of original importation, they shall be so withdrawn for actual export beyond the limits of the United States, then the above obligation to be void; otherwise to remain in full force.

(Signed) B. S. RUSSELL. [SEAL.]
CHAS. H. GRAVES. [SEAL.]
A. J. SAWYER. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) E. G. RUSSELL,
E. C. JONES.

CUSTOMS SEAL, PORT OF DULUTH. I hereby certify that the above is a true copy of the orignal on file in this office. Custom-house, Duluth, Dec., 21st, 1875.

HENRY SILBY, *Collector.*

633 *Bond No.* 11.

Importer: WM. G. MOORHEAD. Vessel: LIDSKGOLF.

CR. DR.

		Liquidations.		Duty	$2,455 81
	Deduct.		1873. Aug. 26.	Add. 10 %.....	245 58
Date.	Description of withdrawal.	Amount of duty.	Date.	Description of withdrawal.	Amount of duty.
					2,701 39

(Indorsed:) Exhibit 17, 18. Filed Feb. 28, 1877. H. E. Mann, clerk.

634 *Rewarehousing entry.* W. B., 4024.]

DISTRICT AND PORT OF DULUTH, *Oct. 4th*, 1872.

Entry of merchandise to be rewarehoused by B. S. Russell, consignee, which was originally imported into the port of New York by Wm. G. Moorhead, in the ship Mary Loweriser, from Cardiff, Eng., on the 28th day of August, 1872, and withdrawn from warehouse at port of New York, on the 29 day of August, 1872, for transportation to this district by (route or vessel) steamers, and consigned to B. S. Russell.

Marks.	Numbers.	Packages & contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	1378	Bars railroad iron	612, 724 lbs.	*a* 70c. p.	100 lbs	less.	10 %	$13, 909	$3, 860 16

(Signed.) B. S. RUSSELL, *Consignee.*

{U. S. CUSTOM HOUSE SEAL, PORT OF DULUTH.} I hereby certify that the above is a true copy of the original on file in this offie.
Custom-house, Duluth, Dec. 20th, 1875.
HENRY SELBY, *Collector.*

635 I, B. S. Russell, do solemnly, sincerely, & truly swear that the goods described in the entry now delivered by me to the collector of *of* this district are the identical goods mentioned in a transportation entry made at the custom-house at New York by Wm. G. Moorhead, on the 29th day of August, 1872, and that said goods are the same in quality, quantity, value, and package (wastage and damage excepted) as at the time of original importation : so help me God.

Port of Duluth.
(Signed) B. S. RUSSELL.

Sworn to, this 4th day of October, 1872, before me.
(Signed) E. C. JONES,
Deputy Collector.

(Indorsed:) W. B. 12. Rewarehousing entry. Importer, Wm. G. Moorhead. Vessel, Mary Loweriser. From Cardiff, Eng. Date Oct. 4th, 1872. Exhibit 19, 20. Filed Feb. 28, 1877. H. E. Mann cl rk.

636 *Rewarehousing bond.—Bond No.* 12.

Know all men by these presents that we, B. S. Russell, ag't & att'y for Wm. G. Moorhead, as principals, and Chas. H. Graves and A. J. Sawyer, as sureties, are held and firmly bound unto the United States of America in the sum of seven thousand seven hundred and twenty (7,720) dollars, to be paid to the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns, firmly, jointly, and severally, by these presents. Witness our hands and seals, at the port of Duluth, this 4th day of October, eighteen hundred and seventy-two.

Whereas certain goods, wares, and merchandise, consisting of 1,378

bars railroad iron, consigned to B. S. Russell, Duluth, were originally imported at the port of New York, in the ship Mary Loweriser, whereof. is master, from Cardiff, Eng., on the 28 day of August, eighteen hundred and seventy-two;

And whereas the above-bounden principals have this day entered the same at the port of Duluth, under the laws of the United States providing for the warehousing of merchandise in bond, as per warehouse entry number 12, in which the said goods, wares, and merchandise are also described or set forth:

Now, therefore, the condition of the above obligation is such that if, within one year from the said date of original importation, the said goods, wares, and merchandise shall be regularly and lawfully withdrawn from public store or bonded warehouse, on payment of the legal duties and charges to which they shall then be subject; or if, after the expiration of one year and within three years from the said date of original importation, they shall be so withdrawn, upon the like payment, with ten per centum added upon the amount, of such duties and charges; or if, at any time within three years from the said date of original importation, they shall be so withdrawn for actual export beyond the limits of the United States, then the above obligation to be void; otherwise to remain in full force.

(Signed) B. S. RUSSELL. [SEAL.]
CHAS. H. GRAVES. [SEAL.]
A. J. SAWYER. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) E. G. RUSSELL,
E. C. JONES.

U. S. CUSTOM-HOUSE SEAL, PORT OF DULUTH. I hereby certify that this is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 21st, 1875.
HENRY SELBY, *Collector.*

637 *Bond No.* 12.

Importer: WM. G. MOORHEAD. Vessel: TOURIST.

CR. DR.

		Liquidations.		Duty	$3,860 16
	Deduct.		1873. Aug. 28.	Add. 10 %	381 01
Date.	Description of withdrawal.	Amount of duty.	Date.	Description of withdrawal.	Amount of duty.
					4,246 17

(Indorsed:) Exhibits '19, 20. Filed Feb. 28th, 1877. H. E. Mann, clerk.

638 *Rewarehousing entry.* W. B., 4019.

DISTRICT PORT OF DULUTH, *Oct. 12th*, 1872.

Entry of merchandise intended to be rewarehoused by B. S. Russell, consignee, which was originally imported into the port of New York by Wm. G. Moorhead, in the ship Lidskgolf, from Cardiff, Eng., on the 26th day of August, 1872, and withdrawn from warehouse, on the 27th day of August, 1872, for transportation to this district by (route or vessel) steamers, and consigned to B. S. Russell.

Marks.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	570	Bars railroad iron...f.....	252, 230 lbs.	*a* 70c. pr.	100 lbs.	less	10%	$5, 725	$1, 589 05

(Signed) B. S. RUSSELL, *Consignee.*

{ CUSTOM HOUSE SEAL, PORT OF DULUTH. } I hereby certify that the above is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 20th, 1875.
HENRY SELBY, *Collector.*

639 I, B. S. Russell, do solemnly, sincerely, and truly swear that the goods described in the entry now delivered by me to the collector of this district are the identical goods mentioned in a transportation entry made at the custom-house at New York by Wm. G. Moorhead, on the 27 day of August, 1872, and that said goods are the same in quality, quantity, value, and package (wastage and damage excepted) as at the time of original importation: so help me God.

Port of Duluth.
(Signed) B. S. RUSSELL.

Sworn to this 12 day of Oct., 1872, before
(Signed) E. C. JONES,
Deputy Collector.

(Indorsed:) R. W. B. 14. Rewarehousing entry. Importer, Wm. G. Moorhead. Vessel, Lidskgolf. From Cardiff, Eng. Date Oct. 12th, 1872. Exhibits 21, 22. Filed Feb. 28, 1877. H. E. Mann, clerk.

640 *Rewarehousing bond.—Bond No.* 14.

Know all men by these presents that we, B. S. Russell, ag't and att'y for Wm. G. Moorhead, as principals, and Chas. H. Graves and A. J. Sawyer, as sureties, are held and firmly bound unto the United States of America in the sum of three thousand one hundred and seventy-eight (3,178) dollars, to be paid to the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Witness our hands and seals, at the port of Duluth, this 12th day of October, eighteen hundred and seventy-two.

Whereas certain goods, wares, and merchandise, consisting of 570 bars railroad iron, consigned to B. S. Russell, Duluth, were originally imported at the port of New York, in the ship Lidskgolf, whereof

is master, from Cardiff, Eng., on the 26 day of August, eighteen hundred and seventy-two;

And whereas the above-bounden principals have this day entered the same at the port of Duluth, under the laws of the United States providing for the warehousing of merchandise in bond, as per warehouse entry No. 14, in which the said goods, wares, and merchandise are also described and set forth:

Now, therefore, the condition of this obligation is such that if, within one year from the said date of original importation, the said goods, wares, and merchandise shall be regularly and lawfully withdrawn from public store or bonded warehouse, on payment of the legal duties and charges to which they shall then be subject; or if, after the expiration of one year and within three years from the said date of original importation, they shall be so withdrawn, upon the like payment, with ten per centum added upon the amount, of such duties and charges; or if, at any time within three years from the said date of original importation, they shall be so withdrawn for actual export beyond the limits of the United States, then the above obligation to be void; otherwise to remain in full force.

(Signed) B. S. RUSSELL. [SEAL.]
CHAS. H. GRAVES. [SEAL.]
A. J. SAWYER. [SEAL.]

Signed, sealed, and delivered in the presence of—
E. G. RUSSELL,
(Signed) E. C. JONES.

{U. S. CUSTOM HOUSE SEAL, PORT OF DULUTH.} I hereby certify that this is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 21st, 1875.
HENRY SELBY, *Collector.*

Bond No. 14.

641 Importer: WM. G. MOORHEAD. Vessel: LIDSKGOLF.

CR. DR.

		Liquidations.		Duty	$1,589 05
	Deduct.		1873. Aug. 26.	10%	158 90
Date.	Description of withdrawal.	Amount of duty.	Date.	Description of withdrawal.	Amount of duty.
					1,749 95

(Indorsed:) Exhibits 21, 22. Filed Feb. 28th, 1877. H. E. Mann, clerk.

642 *Rewarehousing entry.* W. B., 4019.

DISTRICT & PORT OF DULUTH, *Aug.* 4, 1873.

Entry of merchandise intended to be rewarehoused by B. S. Russell, consignee, which was originally imported into the port of New York by Wm. G. Moorhead, in the ship Lidskgolf, from Cardiff, Eng., on the 26 day of August, 1873, and withdrawn from warehouse at the port of New York, on the 27 day of August, 1872, for transportation to this district by (route or vessel) steamer, and consigned to B. S. Russell.

Marks.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	728	Bars railroad iron.....	321,160 lbs.	*a* 70c. pr.	100 lbs.	less	10 %	$7,289	$2,023 30

(Signed) B. S. RUSSELL, *Consignee.*

{U. S. CUSTOM-HOUSE SEAL, PORT OF DULUTH.} I hereby certify that the above is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 20th, 1875.
HENRY SELBY, *Collector.*

643 I, B. S. Russell, do solemnly, sincerely, and truly swear that the goods described in the entry now delivered by me to the collector of this district are the identical goods mentioned in a transportation entry made at the custom-house at New York by Wm. G. Moorhead, on the 27th day of August, 1872, and that the said goods are the same in quality, quantity, value, and package (wastage and damage excepted) as at the time of original importation: so help me God.

Port of Duluth.
(Signed) B. S. RUSSELL.

Sworn to, this 4 day of Aug., 1873, before me.
(Signed) HENRY SELBY, *Collector.*

(Indorsed:) R. W. B. 1. Rewarehousing entry. Importer, Wm. G. Moorhead. Vessel, Lidskgolf. From Cardiff, Eng. Date Aug. 4, 1873. Exhibit' 23, 24. Filed Feb. 28, 1877. H. E. Mann, clerk.

644 *Rewarehousing bond.—Bond No.* 1.

Know all men by these presents that we, B. S. Russell, ag't and att'y for Wm. G. Moorhead, as principals, and J. Q. Adams and Hiram Robbins, as sureties, are held and firmly bound unto the United States of America in the sum of four thousand and fifty (4,050) dollars, to be paid to the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Witness our hands and seals, at the port of Duluth, this 4th day of August, eighteen hundred & seventy-three.

Whereas certain goods, wares, and merchandise, consisting of 728 bars railroad iron, consigned to B. S. Russell, Duluth, was originally imported at the port of New York, in the ship Lidskgolf, whereof
is master, from Cardiff, Eng., on the 26 day of August, eighteen hundred and seventy-two;

And whereas the above-bounden principals have this day entered the same at the port of Duluth, under the laws of the United States providing for the warehousing of merchandise in bond, as per warehouse entry No. 1, in which the said goods, wares, and merchandise are described or set forth:

Now, therefore, the condition of the above obligation is such that if, within one year from the said date of original importation, the said goods, wares, and merchandise shall be regularly and lawfully withdrawn from public store or bonded warehouse, on payment of the legal duties and charges to which they shall then be subject; or if, after the expiration of one year and within three years from the said date of original importation, they shall be so withdrawn, upon the like payment, with ten per centum added upon the amount, of such duties and charges; or if, at any time within three years from the said date of original importation, they shall be so withdrawn for actual export beyond the limits of the United States, then the above obligation to be void; otherwise to remain in full force.

B. S. RUSSELL,
Ag't & att'y W. G. Moorhead.
J. Q. ADAMS.
HIRAM ROBBINS.

Signed, sealed, and delivered in the presence of—
(Signed) HENRY SELBY,
MAURICE H. BYWATER.

{U. S. CUST. HOUSE SEAL, PORT OF DULUTH.} I hereby certify that this is a true copy of the original on file in this office.
HENRY SELBY, *Collector.*

645 *Bond No.* 1.

Importer: WM. G. MOORHEAD. Vessel: LIDSKGOLF.

CR. DR.

		Liquidations.		Duty	$2,023 30
	Deduct.		1873. Aug. 26.	Add. 10 %.....	202 23
Date.	Description of withdrawal.	Amount of duty.	Date.	Description of withdrawal.	Amount of duty.
					2,225 63

(Indorsed:) Exhibits 23, 24. Filed Feb. 28, 1877. H. E. Mann, clerk.

646 *Rewarehousing entry.* R. W. B. 2.

DISTRICT AND PORT OF DULUTH, *Sept. 23d*, 1872.

Entry of merchandise intended to be rewarehoused by B. S. Russell, consignee, which was originally imported into the port of New York by Wm. G. Moorhead, in the ship Nancy M., from Cardiff, Eng., on the 9th day of August, 1872, and withdrawn from warehouse at the port of New York, on the 10th day of August, 1872, for transportation to this district by (route or vessel) steamers, and consigned to B. S. Russell.

Marks.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	1,524	Bars railroad iron	672,000 lbs.	a 70c. p.	100 lbs.	less	10 %	$15,262	$4,233 60

(Signed) B. S. RUSSELL, *Consignee.*

I hereby certify that the above is a true copy of the original on file in this office.

HENRY SELBY, *Collector.*

512 bars, 224,000 lbs., of this entry withdrawn by B. S. Russell, consignee, Aug. 30th, 1873. Remaining in warehouse 1,012 bars, 448,000 lbs. See statement.

647 I, B. S. Russell, do solemnly, sincerely, and truly swear that the goods described in the entry now delivered by me to the collector of this district are the identical goods mentioned in a transportation entry made at the custom-house at New York by Wm. G. Moorhead on the 10th day of August, 1872, and that the said goods are the same in quality, quantity, value, and package (wastage and damage excepted) as at the time of original importation: so help me God.

Port of Duluth.

(Signed) B. S. RUSSELL.

Sworn to, this 23d day of Sept., before me.

(Signed) HENRY SELBY, *Collector.*

(Indorsed:) R. W. B. 2. Rewarehousing entry. Importer, Wm. G. Moorhead. Vessel, Nancy M. From Cardiff, Eng. Date Sept. 23d, 1872. Exhibit' 25, 26. Filed Feb. 28, 1877. H. E. Mann, clerk.

648 *Rewarehousing bond.—Bond No. 2.*

Know all men by these presents that we, B. S. Russell, ag't and att'y for W. G. Moorhead, as principals, and Chas. H. Graves and C. G. Eddy, as sureties, are held and firmly bound unto the United States of America in the sum of eight thousand four hundred sixty-seven (8,467) dollars, to be paid to the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Witness our hands and seals, at the port of Duluth, this 23 day of September, eighteen hundred and seventy-two.

Whereas certain goods, wares, and merchandise, consisting of 1,524 bars railroad iron, consigned to B. S. Russell, were originally imported at the port of New York, in the ship Nancy M., whereof is

master, from Cardiff, Eng., on the 9 day of August, eighteen hundred and seventy-two;

And whereas the above-bounden principals have this day entered the same at the port of Duluth, under the laws of the United States providing for the warehousing of merchandise in bond, as per warehouse entry number 2, in which the said goods, wares, and merchandise are also described or set forth:

Now, therefore, the condition of the above obligation is such that if, within one year from the said date of original importation, the said goods, wares, and merchandise shall be regularly & lawfully withdrawn from public store or bonded warehouse, on payment of the legal duties and charges to which they shall then be subject; or if, after the expiration of one year and within three years from the said date of original importation, they shall be so withdrawn, upon the like payment, with ten per centum added upon the amount, of such duties and charges; or if, at any time within three years from the said date of original importation, they shall be so withdrawn for actual export beyond the limits of the United States, then the above obligation to be void; otherwise to remain in full force.

(Signed) B. S. RUSSELL. [SEAL.]
CHAS. H. GRAVES. [SEAL.]
C. G. EDDY. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) E. G. RUSSELL,
E. C. JONES.

SEAL OF COLLECTOR OF PORT, DULUTH. I hereby certify that this is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 21st, 1875.
HENRY SELBY, *Collector*.

649 *Bond No.* 2.

Importer: WM. G. MOORHEAD. Vessel: NANCY M.

CR. DR.

		Liquidations.		Duty.....	$3,233 60
	Deduct.		1873. Aug. 9	Add. 10 %.....	423 36
Date.	Description of withdrawal.	Amount of duty.	Date.	Description of withdrawal.	Amount of duty.
1873. Aug. 30.	For consumption.....	1,552 32	.....	.....	4,656 96

(Indorsed:) Exhibits 25, 26. Filed Feb. 28th, 1877. H. E. Mann, clerk.

650 *Rewarehousing entry.* R. W. B. 6.

DISTRICT AND PORT OF DULUTH, *Sept. 30th*, 1872.

Entry of merchandise intended to be rewarehoused by B. S. Russell, consignee, which was originally imported into the port of New York by Wm. G. Moorhead, in the ship Familius Minde, from Cardiff, Eng., on the 26th day of August, 1872, and withdrawn from warehouse at port of New York, on the 27th day of August, 1872, for transportation to this district by (route or vessel) steamers, and consigned to B. S. Russell.

Marks.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	510	Bars railroad iron	224,000 lbs.	a 70c. p.	100 lbs.	less	10 %	$4,168	$1,411 20

(Signed) B. S. RUSSELL, *Consignee.*

{U. S. CUSTOM-HOUSE SEAL, PORT OF DULUTH.} I hereby certify that the above is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 30, 1875.
HENRY SELBY, *Collector.*

651 I, B. S. Russell, do solemnly, sincerely, and truly swear that the goods described in the entry now delivered by me to the collector of this district are the identical goods mentioned in a transportation entry made at the custom-house at New York by Wm. G. Moorhead, on the 27 day of August, 1872, and that said goods are the same in quality, quantity, value, and package (wastage and damage excepted) as at the time of original importation: so help me God.

Port of Duluth.
(Signed) B. S. RUSSELL.

Sworn to, this 30th day of Sept., 1872, before me.
(Signed) HENRY SELBY, *Collector.*

(Indorsed:) R. W. B. 6. Importer, Wm. G. Moorhead. Vessel, Familius Minde. From Cardiff, Eng. Date Sept. 30th, 1872. Exhibits 27, 28. Filed Feb. 28, 1877. H. E. Mann, clerk.

652 *Rewarehousing bond.—Bond No. 6.*

Know all men by these presents that we, B. S. Russell, ag't and att'y for Wm. G. Moorhead, as principals, and Charles H. Graves and C. G. Eddy, as sureties, are held and firmly bound unto the United States of America in the sum of two thousand eight hundred twenty-two (2,822) dollars, to be paid to the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns, jointly & severally, firmly by these presents. Witness our hands and seals, at the port of Duluth, this 30 day September, eighteen hundred and seventy-two.

Whereas certain goods, wares, and merchandise, consisting of 510 bars railroad iron, consigned to B. S. Russell, Duluth, were originally imported at the port of New York, in the ship Familius Minde, whereof is master, from Cardiff, Eng., on the 26th day of August, eighteen hundred and seventy-two;

And whereas the above-bounden principals have this day entered the same at the port of Duluth, under the laws of the United States providing for the warehousing of merchandise in bond, as per warehouse entry number 6, in which the said goods, wares, and merchandise are also described or set forth:

Now, therefore, the condition of the above obligation is such that if, within one year from the said date of original importation, the said goods, wares, and merchandise shall be regularly and lawfully withdrawn from public store or bonded warehouse, on payment of the legal duties and charges to which they shall then be subject; or if, after the expiration of one year and within three years from the said date of original importation, they shall be so withdrawn, upon the like payment, with ten per centum added upon the amount, of such duties and charges; or if, at any time within three years from the said date of original importation, they shall be so withdrawn for actual export beyond the limits of the United States, then the above obligation to be void; otherwise to remain in full force.

(Signed) B. S. RUSSELL. [SEAL.]
CHAS. H. GRAVES. [SEAL.]
C. G. EDDY. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) E. G. RUSSELL,
E. C. JONES.

{U. S. CUSTOM-HOUSE SEAL, PORT OF DULUTH.} I hereby certify that this is a true copy of the original on file in this office.

Custom-house, Duluth, Dec. 21st, 1875.

HENRY SELBY, *Collector.*

653 *Bond No.* 6.

Importer: WM. G. MOORHEAD. Vessel: FAMILIUS MINDE.

CR. DR.

		Liquidations.		Duty.....	$1,411 20
	Deduct.		1873. Aug. 26.	Add. 10 %	141 12
Date.	Description of withdrawal.	Amount of duty.	Date.	Description of withdrawal.	Amount of duty.
					1,552 32

(Indorsed:) Exhibits 27, 28. Filed Feb. 28, 1877. H. E. Mann, clerk.

654 *Rewarehousing entry.* R. W. B. 7.

DISTRICT AND PORT OF DULUTH, *Sept. 30th*, 1872.

Entry of merchandise intended to be rewarehoused by B. S. Russell, consignee, which was originally imported into the port of New York by W. G. Moorhead, in the ship Presto, from Cardiff, Eng., on the 28th day of August, 1872, and withdrawn from warehouse at the port of , on the 29 day of August, 1872, for transportation to this district by (route or vessel) steamers, and consigned to B. S. Russell.

Marks.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	909	Bars railroad iron.	403,200 lbs.	@ 70c. p.	100 lbs.	less	10 %	$8 036	$2,540 16

(Signed) B. S. RUSSELL, *Consignee.*

{U. S. CUSTOM-HOUSE SEAL, PORT OF DULUTH.} I hereby certify that the above is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 20th, 1875.
HENRY SELBY, *Collector.*

655 I, B. S. Russell, do solemnly, sincerely, and truly swear that the goods described in the entry now delivered by me to the collector of this district, are the identical goods described in a transportation entry made at the custom-house at New York by W. G. Moorhead, on the 29 day of August, 1872, and that said goods are the same in quality, quantity, value, and package (wastage and damage excepted) as at the time of original transportation: so help me God.

Port of Duluth.
(Signed) B. S. RUSSELL.

Sworn to, this 30th day of Sept., 1872, before me.
(Signed) HENRY SELBY, *Collector.*

(Indorsed:) R. W. B. 7. Importer, Wm. G. Moorhead. Vessel, Presto. From Cardiff, Eng. Date Sept. 30th, 1872. Exhibit' 29, 30. Filed Feb. 28th, 1877. H. E. Mann, clerk.

656 *Rewarehousing bond.—Bond No. 7.*

Know all men by these presents that we, B. S. Russell, ag't and att'y for Wm. G. Moorhead, as principals, and Charles H. Graves and C. G. Eddy, as sureties, are held and firmly bound unto the United States of America in the sum of five thousand eighty (5,080) dollars, to be paid to the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Witness our hands and seals, at the port of Duluth, this 30 day of September, eighteen hundred and seventy-two.

Whereas certain goods, wares, and merchandise, consisting of 90[illegible] bars railroad iron, consigned to B. S. Russell, Duluth, were originally imported into the port of New York, in the ship Presto, whereof is master, from Cardiff, Eng., on the 28 day of August, eighteen hundred and seventy-two;

And whereas the above-bounden principals have this day entered the same at the port of Duluth, under the laws of the United States pro-

viding for the warehousing of merchandise in bond, as per warehouse entry number 7, in which the said goods, wares, and merchandise are also described or set forth:

Now, therefore, the condition of the above obligation is such that if, within one year from the said date of original importation, the said goods, wares, and merchandise shall be regularly and lawfully withdrawn from public store or bonded warehouse, on payment of the legal duties and charges to which they shall then be subject; or if, after the expiration of one year and within three years from the said date of original importation, they shall be so withdrawn, upon the like payment, with ten per centum added upon the amount, of such duties and charges; or if, at any time within three years from the said date of original importation, they shall be so withdrawn for actual exportation beyond the limits of the United States, then the above obligation to be void; otherwise to remain in full force.

(Signed) B. S. RUSSELL. [SEAL.]
CHAS. H. GRAVES. [SEAL.]
C. G. EDDY. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) E. G. RUSSELL,
E. C. JONES.

{U. S. CUSTOM HOUSE SEAL, PORT OF DULUTH.} I hereby certify that this is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 21st, 1875.
HENRY SELBY, *Collector*.

657 *Bond No. 7.*

Importer: WM. G. MOORHEAD. Vessel: PRESTO.

CR. DR.

		Liquidations.		Duty.....	$2,540 16
			1873. Aug. 28	10 %.....	254 01
Date.	Description of withdrawal.	Amount of duty.	Date.	Description of withdrawal.	Amount of duty.
					2,794 17

(Inclosed:) Exhibits 29, 30. Filed Feb. 28, 1877. H. E. Mann, clerk.

658 *Rewarehousing entry.* W. B, 4018.

DISTRICT AND PORT OF DULUTH, *October* 3, 1872.

Entry of merchandise intended to be rewarehoused by B. S. Russell, consignee, which was originally imported into the port of New York by Wm. G. Moorhead, in the ship Familius Minde, from Cardiff, Eng., on the 26th day of August, 1872, and withdrawn from warehouse at port of , on the 27th day of August, 1872, for transportation to this district by (route or vessel) steamers, and consigned to B. S. Russell.

Marks.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	510	Bars railroad iron.....	224,000 lbs	a 70c. p.	100 lbs.	less	10 %	$4,169	$1,411 20

(Signed) B. S. RUSSELL,
Consignee.

{U. S. CUSTOM HOUSE SEAL, PORT OF DULUTH.} I hereby certify that the above is a true copy of the original on file in this office.
Custom house, Duluth, Dec. 20, 1875.
HENRY SELBY, *Collector.*

659 I, B. S. Russell, do solemnly, sincerely, and truly swear that the goods described in the entry now delivered by me to the collector of this district are the identical goods mentioned in a transportation entry made at the custom-house at New York by Wm. G. Moorhead, on the 27th day of August, 1872, and that said goods are the same in quality, quantity, value, and package (wastage and damage excepted) as at the time of original transportation: So help me God.

Port of Duluth.
(Signed) B. S. RUSSELL.

Sworn to, this 3d day of Oct., 1872, before me.
(Signed) E. C. JONES,
Deputy Collector.

(Indorsed:) R. W. B. 9. Rewarehousing entry. Importer, Wm. G. Moorhead. Vessel, Familius Minde. From Cardiff, Eng. Date Oct. 3d, 1872. Exhibits 31, 32. Filed Feb. 28, 1877. H. E. Mann, clerk.

660 *Rewarehousing bond.—Bond No.* 9.

Know all men by these presents that we, B. S. Russell, ag't and att'y for W. G. Moorhead, as principals, and Charles H. Graves and A. J. Sawyer, as sureties, are held and firmly bound unto the United States of America in the sum of two thousand eight hundred & twenty-two (2,822) dollars, to be paid to the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns, jointly & severally, firmly by these presents. Witness our hands and seals, at the port of Duluth, this 23d day of October, eighteen hundred and seventy-two.

Whereas certain goods, wares, and merchandise, consisting of 510 bars railroad iron, consigned to B. S. Russell, Duluth, Minn., were originally imported at the port of New York, in the ship Familius Minde,

whereof is master, from Cardiff, Eng., on the 26th day of August, eighteen hundred and seventy-two:

And whereas the above-bounden principals have this day entered the same at the port of Duluth, under the laws of the United States providing for the warehousing of merchandise in bond, as per warehouse entry number 9, in which the said goods, wares, and merchandise are also described or set forth:

Now, therefore, the condition of the above obligation is such that if, within one year from the said date of original importation, the said goods, wares, and merchandise shall be regularly and lawfully withdrawn from public store or bonded warehouse, on payment of the legal duties and charges to which they shall then be subject; or if, after the expiration of one year and within three years from the said date of original importation, they shall be so withdrawn, upon the like payment, with ten per centum added upon the amount, of such duties and charges; or if, at any time within three years from the said date of original importation, they shall be so withdrawn for actual export beyond the limits of the United States, then the above obligation to be void; otherwise to remain in full force.

(Signed) B. S. RUSSELL. [SEAL.]
CHAS. H. GRAVES. [SEAL.]
A. J. SAWYER. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) E. G. RUSSELL,
E. C. JONES.

{U. S. CUSTOM-HOUSE SEAL, PORT OF DULUTH.} I hereby certify that the above is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 21, 1875.
HENRY SELBY, *Collector.*

661 *Bond No.* 9.

Importer: WM. G. MOORHEAD. Vessel: FAMILIUS MINDE.

CR. DR.

		Liquidations.		Duty.....	$1,411 20
	Deduct.		1873. Aug. 26.	Add. 10%	141 12
Date.	Description of withdrawal.	Amount of duty.	Date.	Description of withdrawal.	Amount of duty.
					1,552 32

(Indorsed:) Exhibits 31, 32. Filed Feb. 28th, 1877. H. E. Mann, clerk.

662 *Rewarehousing entry.*, W. B., 3943.

DISTRICT AND PORT OF DULUTH, *Oct. 12th*, 1872.

Entry of merchandise intended to be rewarehoused by B. S. Russell, consignee, which was originally imported into the port of New York by Wm. G. Moorhead, in the ship Nancy M., from Cardiff, Eng., on the 9th day of August, 1872, and withdrawn from warehouse, on the 10th day of August, 1872, for transportation to this district by (route or vessel) steamers, and consigned to B. S. Russell.

Marks.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	458	Bars railroad iron.....	201, 600 lbs.	*a* 70 c.p.	100 lbs.	less	10%	$4, 579	$1, 270 08

(Signed) B. S. RUSSELL, *Consignee.*

{U. S. CUSTOM HOUSE SEAL, PORT OF DULUTH.} I hereby certify that the above is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 20th 1875.
HENRY SELBY, *Collector.*

663 I, B. S. Russell, do solemnly, sincerely, and truly swear that the goods described in the entry now delivered by me to the collector of this district are the identical goods mentioned in a transportation entry made at the custom-house at New York by Wm. G. Moorhead, on the 10th day of August, 1872, and that said goods are the same in quality, quantity, value, and package (wastage and damage excepted) as at the time of original transportation: so help me God.

Port of Duluth.

(Signed) B. S. RUSSELL.

Sworn to, this 12th day of Oct. 1872, before me.

(Signed) E. C. JONES,
Deputy Collector.

(Indorsed:) R. W. B. 13. Rewarehousing entry. Importer, Wm. G. Moorhead. Vessel, Nancy M. From Cardiff, Eng. Date Oct. 12th, 1872. Exhibits 33, 34. Filed Feb. 28, 1877. H. E. Mann, clerk.

664 *Rewarehousing bond.—Bond No.* 13.

Know all men by these presents that we, B. S. Russell, ag't and att'y for Wm. G. Moorhead, as principals, and Chas. H. Graves and A. J. Sawyer, as sureties, are held and firmly bound unto the United States of America in the sum of two thousand five hundred and forty (2,540) dollars, to be paid to the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Witness our hands and seals, at the port of Duluth, this 12 day of October, eighteen hundred and seventy-two.

Whereas certain goods, wares, and merchandise, consisting of 458 bars railroad iron, consigned to B. S. Russell, Duluth, were originally imported at the port of New York, in the ship Nancy M., whereof is master, from Cardiff, Eng., on the 9th day of August, eighteen hundred and seventy-two;

And whereas the above-bounden principals have this day entered the same at the port of Duluth, under the laws of the United States providing for the warehousing of merchandise in bond, as per warehouse entry number 13, in which the said goods, wares, and merchandise are described or set forth:

Now, therefore, the condition of the above obligation is such that if, within one year from the said date of original importation, the said goods, wares, and merchandise shall be regularly and lawfully withdrawn from public store or bonded warehouse, on payment of the legal duties and charges to which they shall then be subject; or if, after the expiration of one year and within three years from the said date of original importation, they shall be so withdrawn, upon the like payment, with ten per centum added upon the amount, of such duties and charges; or if, at any time within three years from the said date of original importation, they shall be so withdrawn for actual export beyond the limits of the United States, then the above obligation to be void; otherwise to remain in full force.

(Signed) B. S. RUSSELL. [SEAL.]
CHAS. H. GRAVES. [SEAL.]
A. J. SAWYER. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) E. G. RUSSELL.
E. C. JONES.

U. S. CUSTOM-HOUSE SEAL, PORT OF DULUTH.

I hereby certify that this is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 21st, 1875.
HENRY SELBY, *Collector.*

665 *Bond No.* 13.

Importer: WM. G. MOORHEAD. Vessel: NANCY M.

CR. DR.

		Liquidations.		Duty.....	$1,270 08
			1873. Aug. 9	10 %.....	127 00
Date.	Description of withdrawal.	Amount of duty.	Date.	Description of withdrawal.	Amount of duty.
					1,397 08

(Indorsed:) Exhibits 33, 34. Filed Feb. 28, 1877. H. E. Mann, clerk.

666 *Rewarehousing entry.* W. B., 4025.

DISTRICT AND PORT OF DULUTH, *Oct. 12th*, 1872.

Entry of merchandise intended to be rewarehoused by B. S. Russell, consignee, which was originally imported into the port of New York by Wm. G. Moorhead, in the ship Presto, from Cardiff, Eng., on the 28th day of August, 1872, and withdrawn from warehouse at port of New York, on the 29th day of August, 1872, for transportation to this district by (route or vessel) steamers, and consigned to B. S. Russell.

Marks.	Numbers.	Packages and contents.	Quantity.	Per cent.	Per cent.	Per cent.	Per cent.	Total value.	Dutiable value of each package.
	505	Bars railroad iron.....	224, 060 lbs.	@ 70c. p.	100 lbs.	less	10 %	$4, 465	$1, 411 20

(Signed) B. S. RUSSELL, *Consignee.*

{U. S. CUSTOM HOUSE SEAL, PORT OF DULUTH.} I hereby certify that the above is a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 20th, 1875.
HENRY SELBY, *Collector.*

667 I, B. S. Russell, do solemnly, sincerely, and truly swear that the goods described in the entry now delivered by me to the collector of this district are the identical goods mentioned in a transportation entry made at the custom-house at New York by Wm. G. Moorhead, on the 29th day of August, 1872, and that said goods are the same in quality, quantity, value, and package (wastage and damage excepted) as at the time of original transportation: so help me God.

Port of Duluth.
(Signed) B. S. RUSSELL.

Sworn to, this 12th day of Oct. 1872, before me.
(Signed) E. C. JONES, *Deputy Collector.*

(Indorsed:) R. W. B. 15. Rewarehousing entry. Importer, Wm. G. Moorhead. Vessel, Presto. From Cardiff, Eng. Date Oct. 12th, 1872. Exhibit' 35, 36. Filed Feb. 28th, 1877. H. E. Mann, clerk.

668 *Rewarehousing bond.—Bond No. 15.*

Know all men by these presents that we, B. S. Russell, ag't & att'y for Wm. G. Moorhead, as principals, and Chas. H. Graves and A. J. Sawyer, as sureties, are held and firmly bound unto the United States of America in the sum of two thousand eight hundred twenty-two (2,822) dollars, to be paid to the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Witness our hands, at the port of Duluth, this 12th day of October, eighteen hundred and seventy two.

Whereas certain goods, wares, and merchandise, consisting of 505 bars railroad iron, consigned to B. S. Russell, Duluth, were originally imported at the port of New York, in the ship Presto, whereof

is master, from Cardiff, Eng., on the 28th day of August, eighteen hundred and seventy-two;

And whereas the above-bounden principals have this day entered the

same at the port of Duluth, under the laws of the United States providing for the warehousing of merchandise in bond, as per warehouse entry number 15, in which the said goods, wares, and merchandise are also described or set forth:

Now, therefore, the condition of the above obligation is such that if, within one year from the said date of original importation, the said goods, wares, and merchandise shall be regularly and lawfully withdrawn from public store or bonded warehouse, on payment of the legal duties and charges to which they shall then be subject; or if, after the expiration of one year and within three years from the said date of original importation, they shall be so withdrawn, upon the like payment, with ten per centum added upon the amount, of such duties and charges; or if, at any time within three years from the said date of original importation, they shall be so withdrawn for actual export beyond the limits of the United States, then the above obligation to be void; otherwise to remain in full force.

(Signed) B. S. RUSSELL. [SEAL.]
CHAS. H. GRAVES. [SEAL.]
A. J. SAWYER. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) E. G. RUSSELL,
E. C. JONES.

{U. S. CUSTOM-HOUSE SEAL, PORT OF DULUTH.} I hereby certify that this a true copy of the original on file in this office.
Custom-house, Duluth, Dec. 21st, 1875.
HENRY SELBY, *Collector.*

669 *Bond No.* 15.

Importer: W. G. MOORHEAD. Vessel: PRESTO.

CR. DR.

		Liquidations.		Duty.....	$1,411 20
	Deduct.		1873. Aug. 28.	Add. 10%	141 12
Date.	Description of withdrawal.	Amount of duty.	Date.	Description of withdrawal.	Amount of duty.
					1,552 32

(Indorsed:) Exhibits 35, 36. Filed Feb. 28, 1877. H. E. Mann, clerk.

670 United States circuit court, district of Minnesota. In equity.

To the honorable the judges of the circuit court of the United States for the district of Minnesota, sitting in equity:

The bill of complaint of John S. Kennedy, Henry M. Baker, and John S. Barnes, each of the city and State of New York, and a citizen of said State, suing on behalf of themselves and all others bondholders under the mortgages hereinafter mentioned who may come in and seek relief by and contribute to the expenses of this suit, complainants, against the

Northern Pacific Railroad Company, a corporation created by and under the laws of the United States for the purpose of constructing and engaged in constructing a railroad in the State of Minnesota, and having in said State an office and officers for the transaction of its principal business; the Saint Paul and Pacific Railroad Company and the First Division of the Saint Paul and Pacific Railroad Company, each a corporation created and existing by and under the laws of the State of Minnesota, and each transacting its business in and a citizen of said State; Walter L. Cutting of the city and State of New York, and a citizen of said State, trustee under the mortgage for $120,000 hereinafter described; Russell Sage and Samuel J. Tilden, each of the city and State of New York, and a citizen of said State, trustees under the mortgage for $700,000 hereinafter described; Edmund Rice and Horace Thompson, each of Saint Paul, in the State of Minnesota, and each a citizen of said State, and the said Samuel J. Tilden, trustees under the mortgage for $1,200,000 hereinafter described; and George T. M. Davis, of the city and State of New York, and
671 a citizen of said State, and said Horace Thompson and George L. Becker, of Saint Paul, in the State of Minnesota, and a citizen of said State, trustees under the mortgage for $2,800,000 hereinafter described; and John P. Yelverton, of the city and State of New York, and a citizen of said State, and said Samuel J. Tilden, trustees under the mortgage for $1,500,000 hereinafter described; and the said Edmund Rice, Horace Thompson, and Samuel J. Tilden, trustees under the mortgage for $3,000,000 firstly hereinafter described; and the said George L. Becker, Horace Thompson, and Samuel J. Tilden, trustees under the mortgage of $6,000,000 hereinafter described; and William G. Moorhead, of Philadelphia, in the State of Pennsylvania, and a citizen of said State, and the said George L. Becker and Horace Thompson, trustees under the mortgage for $3,000,000 secondly hereinafter described; and the said Horace Thompson, George L. Becker, and William G. Moorhead, trustees under the mortgage for $15,000,000 called the extension mortgage hereinafter described; humbly showeth unto your honors:

That the Northern Pacific Railroad Company is a corporation created and existing under the laws of the United States.

That the Saint Paul and Pacific Railroad Company is a corporation created by and existing under the laws of the State of Minnesota, and that the First Division of the Saint Paul and Pacific Railroad Company is another corporation created by and existing under the laws of the State of Minnesota, namely, the act of February 6, 1864, and other statutes as hereinafter stated.

That said First Division of the St. Paul and Pacific Railroad Company owns and holds the line of railroad from St. Anthony to Breckinridge, commonly known as, and hereinafter called, the main line, and the equipment thereof, and the land grant pertaining thereto, and also the railroad from St. Paul, via St. Anthony, to Watab, commonly known as, and hereinafter called, the branch line, and the equipment thereof, and the land grant pertaining thereto.

That the said St. Paul and Pacific Railroad Company owns and holds the line of railroad from Watab to Brainerd, commonly known as, and hereinafter called, the Brainerd extension, a distance of about sixty miles, and also the line of railroad from St. Cloud to St. Vincent, a distance of about 310 miles, commonly known as, and hereinafter called, the St. Vincent extension, and the land grant pertaining thereto, all of which is more fully hereinafter stated.

That bonds under and in pursuance of the mortgages hereinafter

mentioned, and secured thereby, have been issued and are now held to the following amounts, or thereabouts, namely: On the branch
672 mortgages, $2,750,000; on the main line mortgages, $8,950,000; and on the extension mortgage, $10,700,000, as more particularly hereinafter stated.

That the plaintiffs are the holders of some of the bonds issued under each of said mortgages, except the first two on the branch line and the first and last on the main line, and numerous other persons are holders of other like bonds so issued, and the plaintiffs bring this action for the benefit of all said bondholders who may come in and share the costs and expenses of this suit, and such holders are very numerous and of divers places of residence, and it is impracticable to make them all parties to this action.

And your orators further allege that, by an act of the legislature of the State of Minnesota approved March 10, 1862, entitled "An act to facilitate the construction of the Minnesota and Pacific Railroad and to amend and continue the act of incorporation relating thereto," the defendant the St. Paul and Pacific Railroad Company was organized; that in and by said act the last-named defendant was authorized and empowered to construct and operate a line of railway from Stillwater, via St. Paul, St. Anthony, and Minneapolis, to the town of Breckinridge, on the Sioux Wood River, with a branch from St. Anthony, via Anoka, St. Cloud, and Crow Wing, to St. Vincent, near the mouth of Pembina River; that by said act there was granted to the said last-named defendant, to aid in the construction of its said main and branch lines of roads, six full sections of land for each and every mile thereof, which lands had before that time been granted to the late Territory of Minnesota by an act of Congress entitled "An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of railroads in said Territory, and granting public lands, in alternate sections, to the State of Alabama to aid in the construction of a certain railroad in said State, and granting certain lands to railroad companies therein named," approved March 3, 1857; that said grant of lands to said defendant was upon the conditions in said acts prescribed, to which acts, for greater particularity, reference is hereby had; that after the organization of the last-named defendant, as aforesaid, and on or about March 11, 1862, the said last-named defendant duly issued, negotiated, and for value transferred its negotiable bonds or writings obligatory to the amount of the sum of one hundred and twenty thousand dollars ($120,000), and, as security for the payment of the same, on or about the day last aforesaid, executed, acknowledged, and delivered to one Walter L. Cutting, as trustee, its trust-deed or mortgage of all that part of its said line of railroad which extends from the Mississippi River, in St. Paul, to St. Anthony, including the principal depot at the latter named
673 place; that said mortgage was, soon after its delivery, duly recorded, in accordance with the laws of Minnesota; that none of said bonds so secured thereby have been paid, discharged, or cancelled, except as hereinafter stated, and that said mortgage still stands as an encumbrance upon the property conveyed thereby, except as hereinafter stated.

And your orators further allege that afterwards, and on or about the 2d day of June, 1862, the said last-named defendant, for the professed purpose of enabling it to raise funds wherewith to complete and equip so much of its said branch line of road as extends from St. Anthony to Watab, a distance of eighty (80) miles from St. Paul, issued, transferred, and for value negotiated its negotiable bonds or writings obligatory to the further amount of the sum of seven hundred thousand dollars

($700,000), and, as security for the payment of the same, on or about the day last aforesaid, executed, acknowledged, and delivered, in due form of law, to Russell Sage and Samuel J. Tilden, as trustees, its trust-deed or mortgage of all that part of its said main line of road which extends from St. Paul to St. Anthony, and of all its said branch line of road extending from St. Anthony to Watab, together with all the franchises, equipments, and appurtenances thereto belonging; that said mortgage was, soon after its delivery, duly recorded in accordance with the laws of Minnesota; that none of the said bonds so secured thereby have been paid, discharged, or cancelled, except as hereinafter stated, and that said mortgage still stands as an encumbrance upon the property conveyed thereby, except as hereinafter stated.

And your orators further allege that afterwards, and on or about the 2d day of June, 1862, the said last-named defendant, for the professed purpose of enabling it to raise funds wherewith to construct and complete its said branch to Watab, issued, negotiated and for value transferred its negotiable bonds or writings obligatory, to the further amount of the sum of one million two hundred thousand dollars ($1,200,000), and, as security for the payment of the same, on or about the day last aforesaid, executed, acknowledged, and delivered, in due form of law, to Edmund Rice, Horace Thompson, and Samuel J. Tilden, as trustees, its trust-deed or mortgage of that part of its said main line of road extending from St. Paul to St. Anthony, and of that part of its said branch line of road extending from St. Anthony to Watab, together with all equipments and appurtenances, and also all the lands pertaining to such parts of its said main and branch lines of road as it had derived from said act of legislature and said act of Congress, being three thousand eight hundred forty acres per mile, and in all three hundred and seven thousand two hundred acres; that said mortgage was, soon after its delivery, duly recorded in accordance with the laws of the State of Minnesota; that none of said bonds so secured thereby have been
674 paid, discharged, or cancelled, except as hereinafter stated, and that said mortgage still stands as an encumbrance upon the property conveyed thereby, except as hereinafter stated.

And your orators further allege that after the issuance of all the bonds aforesaid, and the execution and delivery of said mortgages, to wit, on or about the 6th day of February, 1864, the defendant the First Division of the St. Paul & Pacific Railroad Company was organized, and became a corporation, under and by virtue of an act of legislature of the State of Minnesota entitled "An act to amend the charter of the St. Paul & Pacific Railroad Company," and of acts duly performed thereunder; and on or about the day last aforesaid acquired and became the owner of all the property, franchises, and interests of the defendant the St. Paul & Pacific Railroad Company belonging to its said lines of road from St. Paul to Watab, and from St. Anthony to a point between the foot of Big Stone Lake and the mouth of Sioux Wood River, together with the lands granted as aforesaid for the construction of said lines of road.

And your orators further allege that afterwards, and on October 1st, 1865, the defendant the First Division of the St. Paul & Pacific Railroad Company, for the professed purpose of retiring and recalling all the bonds aforesaid, and consolidating its bonded indebtedness pertaining to said line of road from St. Paul to Watab, and for the further professed purpose of procuring funds to complete and equip such line of road, issued its negotiable bonds or writings obligatory for the further amount of two millions eight hundred thousand dollars ($2,800,000),

and, as security for the payment of the same, on or about the day last aforesaid, executed, acknowledged, and delivered, in due form of law, to George L. Becker, Horace Thompson, and George T. M. Davis, as trustees, its trust-deed or mortgage of all said line of road from St. Paul to Watab, commonly known as the branch line, and all property, franchises, and interests pertaining thereto, and all the lands granted as aforesaid to aid the construction thereof, except one hundred and twenty sections before that time conveyed to one Winter; that said mortgage was, soon after its delivery, duly recorded in accordance with the laws of Minnesota; that it was expressly provided in and by said mortgage that of the bonds secured thereby the amount of two million and twenty thousand dollars ($2,020,000), being the aggregate amount of said three prior issues of bonds, should be retained by said trustees until the surrender of the bonds of the prior issues; that, in pursuance of the scheme contemplated by said last-named mortgage, the greater part, as your orators are informed and believe, of the bonds of said three prior issues were retired, but as to the precise number left still outstanding your orators cannot state; and your orators further
675 state that nearly or quite all the bonds secured by said last-mentioned mortgage have been actually negotiated and transferred for value, and are yet outstanding, and said mortgage is an incumbrance to the amount thereof upon the property conveyed thereby.

And your orators state that of said four issues of bonds pertaining to said branch line from St. Paul to Watab there are now outstanding, in the aggregate, two million seven hundred and fifty thousand dollars.

And your orators further allege that heretofore, and on or about March 1, 1864, the defendant the First Division of the Saint Paul and Pacific Railroad Company, for the professed purpose of raising funds to construct its said line of road from St. Anthony to a point near the foot of Big Stone Lake, commonly known as the main line, issued and negotiated, as hereinafter stated, its negotiable bonds or writings obligatory to the amount, in the aggregate, of one million five hundred thousand dollars and, as security for the payment of the same, on or about the day last aforesaid, executed, acknowledged, and delivered, in due form of law, to Samuel J. Tilden and John P. Yelverton, as trustees, its trust-deed or mortgage of one hundred and fifty miles in extent, from St. Anthony toward a point near the foot of Big Stone Lake, of its said line of road commonly known as the main line, together with all the property and franchises appertaining thereto; that said mortgage, soon after its delivery, was recorded in accordance with the laws of Minnesota, and still remains a valid encumbrance to the amount of the bonds secured thereby upon all the property thereby conveyed, said bonds all being yet outstanding, as hereinafter stated.

And your orators further state that afterwards, and on the day last aforesaid, for the professed purpose of constructing and completing its said main line of road for the distance aforesaid, the defendant the First Division of the Saint Paul and Pacific Railroad Company issued, negotiated, and for value transferred its negotiable bonds or writings obligatory to the further amount, in the aggregate, of three millions of dollars ($3,000,000), and, as security for the payment of the same, executed, acknowledged, and delivered, in due form of law, to Edmund Rice, Horace Thompson, and Samuel J. Tilden, as trustees, its trust-deed or mortgage of said one hundred and fifty miles in extent, from St. Anthony toward a point near the foot of Big Stone Lake, of its said line of road commonly known as the main line, together with all the property and franchises pertaining thereto, and of all the lands granted

as aforesaid to aid in the construction of said extent of said main line, being in all five hundred and seventy-six thousand acres, or six
676 sections to each mile; that said mortgage, soon after its delivery, was recorded in accordance with the laws of this State; that the bonds thereby secured are all yet outstanding, and said mortgage remains a subsisting encumbrance to the amount of such bonds upon the property thereby conveyed.

And your orators further state that afterwards, and by an act of Congress entitled "An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa, and for other purposes," approved March 3, 1865, the defendants the said railroad companies became entitled to ten sections of land per mile to aid in the construction of their said respective lines of road, including said six sections per mile originally granted, as hereinbefore stated.

And your orators further state that after the passage of said act of Congress, and on or about the first day of July, 1868, the defendant the First Division of the Saint Paul and Pacific Railroad Company, for the professed purpose of completing its said main line from St. Anthony to Breckenridge, a distance of two hundred and ten miles, issued, negotiated, and for value transferred its negotiable bonds or writings obligatory to the further aggregate amount of six millions of dollars ($6,000,000), and, as security for the payment thereof, executed, acknowledged, and delivered, in due form of law, its trust-deed or mortgage to George L. Becker, Horace Thompson, and Samuel J. Tilden, as trustees, of all its said main line of road between said named points, together with all the property and franchises pertaining thereto, and all the lands granted as aforesaid to aid in the construction of said main line of road, being ten sections to each mile thereof; that said mortgage was recorded, soon after the delivery thereof, in accordance with the laws of Minnesota; that the greater part of said bonds secured thereby are yet outstanding, and said mortgage still stands as a subsisting encumbrance to the amount of said bonds upon the property thereby conveyed. That said last-named mortgage, and said issue of bonds thereunder, covered and included said issue of bonds to the amount of one million five hundred thousand dollars secured by the said mortgage of March 1st, 1864, and the said one million five hundred thousand dollar issue of bonds were transferred to the trustees in said six million mortgage, for the benefit of the holders of the bonds secured thereby, as collateral security; and that said one million five hundred thousand dollars of bonds are not now outstanding for any other purpose.

And your orators further state that under said three million dollar mortgage, and under said six million dollar mortgage, there are now outstanding bonds in the hands of bona fide-holders to the amount of eight million nine hundred and fifty thousand dollars.

677 And your orators further state that afterwards, and on Dec. 1, 1870, the defendant the First Division of the Saint Paul and Pacific Railroad Company executed, acknowledged, and delivered, in due form of law, to George L. Becker, Horace Thompson, and William G. Moorhead, as trustees, its trust deed or mortgage of its said main line from St. Anthony to Breckenridge, and of the lands granted as aforesaid to aid in the construction thereof, to secure the payment of a further issue of bonds to the amount of three million ($3,000,000) of dollars; that said mortgage was recorded in accordance with the laws of Minnesota, soon after its execution; that one and a half millions of dollars of said bonds in said mortgage described were transferred by said First Division Company to one E. D. Litchfield, in payment to him for certain

stock by him held in said First Division of the Saint Paul and Pacific Railroad Company and transferred to the Northern Pacific Railroad Company or its officers; and that no other of said series of bonds have ever been issued; and that said transfer of bonds to said Litchfield was made by said First Division Company, and taken by said Litchfield, with intent to defraud the creditors of said company.

And your orators allege that by an act of Congress approved March 3, 1871, entitled "An act authorizing the Saint Paul and Pacific Railroad Company to change its lines in consideration of a relinquishment of lands," it was provided that the defendant the Saint Paul and Pacific Railroad Company might so alter its branch lines as to locate and construct a continuation of its said branch line running up the Mississippi River from Crow Wing to Brainerd, there to intersect with the Northern Pacific Railroad, and a second branch line running from St. Cloud, via Otter Tail Lake or Rush Lake, to St. Vincent, with the same proportionate grant of lands to aid in the construction thereof as had been before that time granted by said prior acts of Congress.

That said First Division of the Saint Paul and Pacific Railroad Company, hereinafter called the First Division Company, on or about the first day of April, 1871, entered into an agreement with the said Saint Paul and Pacific Railroad Company, hereinafter called the Saint Paul Company, whereby the First Division Company agreed to construct and equip said St. Vincent and Brainerd extensions, and to take a lease thereof for a term of ninety-nine years, and to make the bonds provided for by the extension mortgage referred to in said contract, and dispose of said bonds, and with the proceeds thereof pay for the said construction and equipment.

Copies of which contract and lease, signatures, and certificates of acknowledgment omitted are hereunto annexed, marked Exhibit A and B, and made a part of this bill.

678 That in pursuance of such contract and arrangement, the defendant the Saint Paul and Pacific Railroad Company, on April 1, 1871, executed, acknowledged, and delivered, in due form of law, to Horace Thompson, George L. Becker, and William G. Moorhead, as trustees, its trust-deed or mortgage to secure the payment of fifteen million dollars of bonds to be issued by said First Division Company, as provided in said contract, upon the property, lands, franchises, and interest therein described, a true copy of which mortgage, save the seals and signatures of the parties and witnesses thereto, and save the official certificates of the acknowledgments thereof, is hereunto annexed, marked Exhibit C.

And your orators allege that said mortgage, soon after its delivery, was duly recorded in accordance with the laws of the State of Minnesota; that there have been issued, negotiated, and for value transferred, and are now actually outstanding in the hands of bona-fide holders, bonds described in and secured by said mortgage to the amount of ten million seven hundred thousand dollars; that the said mortgage, contract, and lease were all executed at the same time, and constituted one transaction; that the said Saint Paul Company has no property whatever except the franchise to build said extension lines, and, by building the same, the right to secure the lands granted by Congress to aid in the construction of the same, at the rate of ten sections per mile; that by the construction of said extension lines said company would become entitled to 2,368,000 acres of land under said grant; that the security of the bondholders under said extension mortgage depended entirely upon the construction of said extension lines, and that, in order to se-

cure the lands under the Congressional grant, it is necessary that said lines shall be fully constructed by the 3d day of December, 1873; that all of the bonds issued under said extension mortgage were solely for the purpose of raising means to complete said lines, and were negotiated upon the faith of the proceeds being so applied and the faithful execution of said agreement and the provisions of said mortgage in respect thereto.

That the First Division Company did accordingly receive the proceeds of said $10,700,000 of said extension mortgage bonds, to wit, 8,000,000, and also the further sum of $900,000 as an advance on 4,270 of said bonds not sold, but left in pledge to secure such advance.

And your orators further allege that default has been made in the condition of said mortgage on the part of the said defendants the St. Paul & Pacific Railroad Company, and the First Division of the St. Paul and Pacific Railroad Company among other things, in
679 these, that the said companies have failed, refused, neglected, and are unable to construct or complete said lines of road in said mortgage described, as in and by said contract, mortgage, and the bonds issued thereunder they have covenanted and agreed to do, a more particular statement of which failure, refusal, neglect, and inability is elsewhere in this bill more fully set forth; and that the said companies have failed and refused to faithfully and diligently use and apply the net proceeds of the bonds negotiated and issued as aforesaid in the construction and equipment of said lines of railroad in said mortgage described, but on the contrary have wrongfully, and in fraud of the rights of the holders of the bonds so negotiated, diverted the greater part of the proceeds of said bonds to other purposes, a more particular statement of which wrongful and fraudulent diversion of said proceeds is elsewhere in this bill more fully set forth.

The said First Division Company, by William G. Moorhead, its construction agent, on the 2d day of October, 1871, entered into a contract with C. A. DeGraff, W. Crooks, and Nicholas DeGraff, partners under the firm name of DeGraff & Co., for the construction by said firm of that portion of the branch line of the St. Paul & Pacific Railroad, extending from St. Paul up the Mississippi River, included between Sauk Rapids village and Brainerd, a distance of about sixty-one (61) miles; that the said firm, by said contract, agreed to complete such portion of said branch line on, or before June 1, 1872; and the said company, by said contract, agreed on its part to pay the said firm on the 15th day of each month for said work, as the same should progress, upon estimates of the amount thereof made and furnished as in said contract specified, excepting and reserving 10 per cent. until the completion of the work, and agreed to furnish for such construction all iron, rails, splices, bolts, and spikes, frogs, and switches, as the same should be needed.

And your orators further allege that on October 5, 1871, the said First Division of the St. Paul & Pacific Railroad Company, by its said construction agent, entered into a further contract with said DeGraff & Co. for the construction of the line of road of such company running from St. Cloud to St. Vincent, commencing at the west end of the bridge spanning the Mississippi River to be located at or near St. Cloud and terminating at a point one hundred and thirty (130) miles, or thereabouts, from such point of beginning, being at the crossing of the Northern Pacific Railroad; that said firm, by said contract, agreed to complete such portion of said line of road on or before March 1, 1873; and the said company, on its part, by said contract, agreed to pay said firm on the 15th day of each month for such work, as the same should progress,

upon estimates to be furnished in the manner in said contract
680 specified, saving and reserving until the final completion of the work 10 per cent. of the amount thereof, not exceeding in the aggregate fifty thousand dollars, and further agreed to furnish for such construction all iron, rails, splices, bolts, frogs, and switches, as the same should be needed.

And your orators further allege that on the 5th day of October, 1871, the First Division of the St. Paul and Pacific Company, by its said construction agent, entered into a further contract with said DeGraff & Co., for the construction of that part of said line of road last mentioned, commencing at a point at the crossing of the Northern Pacific Railroad and extending to Pembina, a distance of two hundred (200) miles, or thereabouts; that said firm by said contract agreed to complete such portion of said line on or before March 1st, 1873; and the said company, on its part, by said contract agreed to pay said firm on the 15th day of each month for said work, as it should progress, upon estimates to be furnished as in said contract set forth, excepting and reserving 10 per centum until the final completion of the work, not exceeding fifty thousand dollars, and to furnish for such construction the necessary iron, rails, spikes, bolts, frogs, and switches, as the same should be needed.

That under and by virtue of said contracts with DeGraff & Co., and pursuant to the terms thereof, they, the said DeGraff & Co., commenced the construction of said extension lines, and continued the work thereon until the fifteenth day of October, 18 2, at which time the said First Division Company having failed to make to said contractors payments according to the terms of said contract, the such contractors, because of such failure, suspended work under said contract, and have never since resumed such work, and no further attempt has been made to construct such extension lines. That said First Division Company is still indebted to said contractors in the amount of five hundred thousand dollars for work done by them under said contract. That for the work done by said contractors under said contracts said company paid them, in cash, one million two hundred and fifty thousand dollars, and no more, and after such suspension of work it turned over to them, in part payment of the amount it then owed them, iron which it had purchased and then had, to be used in constructing said extension, to the amount in value of two hundred and two thousand dollars. That prior to such suspension said First Division Company purchased, with the proceeds of bonds issued under said extension mortgage, all the iron necessary for the construction of said extensions, and used so much thereof as was needed in the construction of the parts of said extensions which have been completed, and the balance thereof, except that turned over to De-
681 Graff & Co., as aforesaid, the said company has sold or hypothecated, for very nearly its full value, to secure debts incurred or loans negotiated by it. That the value of the iron so sold or hypothecated was at least one million seven hundred thousand dollars. That the cost of the material by said company actually applied to the construction of said extension did not exceed $1,700,000, and that said company has not expended towards the construction of said extensions, in addition to the payments so made to said DeGraff & Co. and the cost of said material, a greater amount than $100,000. And all the proceeds of said bonds sold as aforesaid, and of said advance of nine hundred thousand dollars, except as above stated, have been wrongfully and illegally appropriated to other purposes than the construction or equipment of said extensions.

That of said extensions said company has completed only one hundred and thirty-nine miles, to wit, from St. Cloud westward for a distance of

thirty-five miles, and from the intersection of said St. Vincent extension with the line of the Northern Pacific Railroad, near Glyndon, southward, twelve miles; and from said intersection northward ninety-two miles, all on the line of the St. Vincent extension.

That of said extensions there now remains uncompleted two hundred and thirty miles, or thereabouts, the grading of which is about four-fifths completed, and the bridges all framed and ties all made.

That the lands to which said St. Paul Company would be entitled upon the completion of said incompleted portions of said extensions, and would obtain by such completion, are of great extent and value, to wit, the amount of one million four hundred and seventy-two thousand acres, which, upon the completion of said extensions, will be of the value of six dollars per acre, and of the aggregate value of eight millions eight hundred and thirty-two thousand dollars.

That the Northern Pacific Railroad Company holds and owns nearly all the shares of the capital stock of said St. Paul Company and said First Division Company, and by virtue thereof has constituted the boards of directors of said St. Paul Company and First Division Company mainly out of the directors of said Northern Pacific Company; that said Moorhead is in the service of said Northern Pacific Railroad Company, and has been for a long time past; that all the management and control of the finances, lands, and property of said Saint Paul Company and said First Division Company for a long time past have been and are now under the control of said Northern Pacific Railroad Company, through its officers and agents.

That the said First Division Company, its officers and stockholders, have wholly failed to carry on the construction of said extensions,
682 and are now wholly unable to do so; and while so neglecting to provide for the construction of said extensions, or to apply the proceeds of said extension bonds to that purpose, and while by such neglect the operations of the contractors were so suspended, also neglected to fulfill its duties by securing the lands to which the said Saint Paul Company had become entitled by the completion of a portion of the said line as aforesaid, and does still so neglect and refuse. That by the construction of said completed portions of said extensions the said St. Paul Company became, and is now entitled to receive and to have, the title to a large amount of land, to wit, to the amount of between five hundred thousand and six hundred thousand acres, which lies contiguous to such completed portions, and which, with said extensions completed, would be worth at least six dollars per acre; but that the said St. Paul Company and the said First Division Company, and the trustees in said extension mortgage, have each utterly neglected to secure said lands, or any of them, by selecting and entering such lands at the land-office and procuring the lists thereof, so that the title to such lands has never become absolutely vested in said St. Paul Company. That such neglect has been in the interest of and instigated and procured by the said Northern Pacific Railroad Company, and in fraud of the rights of the bondholders under said extension mortgage.

That said Northern Pacific Railroad Company applied for patents for parts of said lands, and actuallly obtained the issue of such patents, dated January 14, 1873, for 29,782½ acres of valuable lands which of right belonged to said St. Paul Company, and constituted a part of the premises mortgaged by said extension mortgage; said patents were so obtained on or about January 14, 1873; and said Northern Pacific Railroad Company also claimed divers others of the lands to which the said Saint Paul Company and said St. Vincent extension mortgage were en-

titled; that the said First Division and St. Paul Companies and the trustees in said extension mortgage having neglected their duty in the premises, the bondholders under said extension mortgage applied to the Secretary of the Interior, and on the hearing of said application, and of opposition thereto by said Northern Pacific Railroad Company, the Secretary decided that the claims of the Northern Pacific Railroad Company were invalid, and that the patents were erroneously issued, and the right to the lands was in the St. Paul Company.

That the said St. Paul Company, and the said First Division Company, and the trustees in said extension mortgage each and all neglected to oppose said attempt of said Northern Pacific Railroad Company to obtain said lands, and each and all have ever since neglected, and do now neglect, to secure to said St. Paul Company the title to the lands to which said company is entitled under said decision of the Secretary of the Interior.

683 That by the terms of the land grants to said Northern Pacific Railroad Company, and to said St. Paul and Pacific Railroad Company, if the said Northern Pacific Railroad Company could prevent the further construction of the line of the said St. Paul and Pacific Railroad Company south of Glyndon until the 3d day of December next, then a part of the lands, being more than 128,000 acres, and of a value greater than $768,000, which by the said decision of the Secretary of the Interior belong to the said St. Paul and Pacific Railroad Company, and are included in the said extension mortgage, would be forfeited, and the right of the same would pass to the said Northern Pacific Railroad Company; and that should such action of said Northern Pacific Railroad Company be successful, it would entirely deprive the St. Paul and Pacific Railroad Company of the benefit of said decision to the extent of one-half of the lands thereby affected, and possibly also of the indemnity lands given to said St. Paul and Pacific Railroad Company by said act of Congress for lands actually settled on other parts of its line.

That the said Northern Pacific Railroad Company has given notice of its intention to take proceedings to resist or reverse the said determination of the Secretary of the Interior, and said last-named company has attempted, and still threatens to attempt, to defeat the land grant of the St. Paul and Pacific Railroad Company, in whole or in part, in order thereby to make the lands which were appropriated by the acts of Congress to the St. Paul and Pacific Railroad Company free and available to the Northern Pacific Railroad Company under its own land grant; and said Northern Pacific Railroad Company has co operated in procuring the neglects and delays which have intervened in the work of construction and other measures necessary to secure to the St. Paul Company its proper lands under its land grant, with a like intent and design, and now seeks and designs to defeat the completion of said St. Paul and First Division lines of railroad within the time limited by law therefor.

That said Moorhead, as agent of said First Division Company, received large amounts of money, proceeds of said bonds, to be applied to the construction of the said extensions, of which moneys he appropriated large sums to other uses and did not apply to such construction, and he in divers ways and manners has been unfaithful and negligent in respect of his duties as agent.

That of the bonds issued under said extension mortgage the said First Division Company, with the consent and connivance of said Moorhead and said George L. Becker, wrongfully and unlawfully, and in

fraud of the rights of the bondholders under said mortgage, appropriated and expended the proceeds of one million five hundred
684 thousand dollars thereof in constructing and completing the main line of said First Division Company, to wit, its line of road from St. Anthony to Breckinridge, and by such appropriations and expenditures of said money the First Division Company was enabled to construct and complete its said main line and to secure the lands appertaining thereto, and without such money said company could not and would not have constructed and completed said main line nor secured said lands.

That the accounts of said First Division Company, and its statements or balance sheets, from time to time made and issued, have been obscure, unintelligible, and unsatisfactory; and the business of said company in that respect has been negligently conducted; and by said statements and balance sheets the company appears to have incurred a large floating debt, the origin of which is not accounted for.

That the city of St. Cloud, desiring the First Division Company to make a change in the line of its railroad and the location of its bridge in said city, as an inducement thereto gave that company $65,000 in bonds of said city, on which half yearly interest was payable at seven per cent. per annum; that in consideration thereof said change was made, and said company incurred additional expense of construction by means thereof; but said bonds were wrongfully disposed of, and neither the interest accrued thereon for one and a half years last past nor the proceeds of said bonds have been appropriated to the payment of said additional expense, or in any way applied to the use of the First Division Company.

That the management of the business and finances of the said St. Paul Company and said First Division Company has been and is negligent, wasteful, and the same will be ruinous to the interests of said companies and of the holders of bonds under any mortgages thereon unless this court shall interpose and prevent such mischief.

That the business of the main line has been and is grossly neglected and mismanaged, to the prejudice of the bondholders; that among other things the First Division Company made contracts with Hill, Griggs & Co. and Armstrong & Co. giving them the exclusive right to carry lumber and wood over the main line, and by means thereof the value of timber lands along that line and the price of lumber and wood in St. Paul, and consequently the business of various kinds dependent on the preparing and using timber and wood, are placed under the control of those parties and subjected to their overcharges and exactions, and the traffic of the railroad is greatly impaired; that on said line, and about fifty miles from St. Paul, there is a heavily timbered tract extending about forty miles along said line, and of about thirty miles wide on each side, capable of furnishing railroad ties, which are greatly
685 in demand, and the timber is wanted in the market for many purposes; that of said tract the said First Division Company owns 400 sections; that by reason or by color of said contract, and the complicity of some of the officials or agents of said First Division Company in the same, said company has failed for the last three years to obtain the benefit of said timber property, and is still suffering great loss by means thereof, and such losses are remediless; that said contracts are for an unauthorized and unlawful monopoly, and were made in breach of the law and of public rights, and they are producing great harm to the business and trade of citizens as well as to the traffic of the railroad and the lumber interests of the said company, and are exposing said com-

pany to the danger of being proceeded against by the State government for breach of charter and public obligation, which has already been threatened by a motion in the legislature of Minnesota.

That the management of said main line for a long time past has been, and now is, such as to favor certain parties having grain-houses along the line, and to the prejudice of the farmers and producers settled along the vicinity of the line; that the company often fails to have cars in readiness for grain when brought to the railroad, and thereby exposes farmers to the necessity of a forced sale below the price to such parties having grain-houses.

That there is so little time left for the completion of said extensions, and thereby securing the land grant, that it is impracticable to provide means therefor by any legal proceedings to collect moneys from any corporations or persons, or to recover damages from persons and parties delinquent or liable; and unless this court shall interpose by its equity power and take charge of the trust funds, and cause measures to be promptly taken for preserving said trust funds and securing said land grant, the holders of said bonds will suffer great, inevitable, and remediless loss to the amount of millions of dollars, which such interposition might prevent.

That the said bondholders for the most part reside in Europe, and have taken the bonds and have advanced their money thereon mainly upon the security furnished by the land grant, and they look now to said land grant and the road when completed as their principal security.

That twenty per cent. of the proceeds of the said $10,700,000 of bonds were retained and preserved as a special fund to pay the first maturing coupons on the extension mortgage, out of which special fund said coupons hitherto matured have been paid, and a sum remains sufficient for the payment of one or more sets of the coupons not yet matured.

That the said First Division Company and said Saint Paul Com-
686 pany are now greatly embarrassed and without credit and wholly insolvent, unable to provide the money necessary to the said completion of the road; and that a large amount of interest became payable on the said bonds issued under the said main-line mortgage and the said branch mortgage, on the first day of May and the first day of June, 1873, which is unpaid, and the First Division Company is in default thereon, and has no means of paying the same.

That the shares of said First Division Company and of the St. Paul Company, to the full amount of the capital thereof, were falsely and fraudulently issued as full-paid stock, without any payment therefor to the company, and were so issued to some person or persons unknown to the plaintiffs, by which person or persons the same were transferred to said Northern Pacific Railroad Company, which received and held the same with notice of said fraudulent issue, and paid such person or persons therefor a sum far less than the nominal amount thereof.

That said St. Paul Company and said First Division Company are wholly without the means or credit to procure the completion of their lines of railroad, and the whole property of said companies will not suffice to pay their debts, and the shares of the capital stock of said two companies are therefore of no actual value as property, and the whole of the estates and franchises of said two companies constitute in effect a trust fund for the benefit of the bondholders alone, and in equity ought to be managed and administered for the exclusive benefit and protection of the bondholders.

That if the court shall so interpose and constitute a receiver, with adequate power, and place him in possession of the trust funds and

mortgaged premises, and give him the necessary power to procure advances of money to complete the extensions, upon receipts or vouchers which will give a preference to the persons making such advances, the plaintiffs and other bondholders and other men will provide the funds for that purpose; that the amount of money requisite for said completion is about five millions of dollars, and is so large that it is impossible to provide it by any other means than such receipts and vouchers; that in order so to raise such moneys it will be necessary for the receiver to be instructed or authorized to give an equal lien and preference to all the lenders, and to pay them interest at such rate as may be necessary to procure the loan, and to agree upon the time of repayment, and to assure the lenders of the first claim on all the property and its proceeds after necessary expenses are discharged.

That the said trustees in said extension mortgage have at all times utterly neglected to attend to or protect the interests of the bondholders under said mortgage; that during all the time since the execution of said extension mortgage the said Moorhead has been in
687 the employment and service of said Northern Pacific Railroad Company, and during such time has acted under its control and in its interest, and has utterly disregarded the interests of the said First Division Company and the interests of the bondholders under said mortgage. That during such time the said Becker has been and now is president of said First Division Company, and has at all times known of the acts and doings of said company, and of said Northern Pacific Railroad Company, and of said Moorhead in the premises, and has participated in and consented to all such acts and doings. That said Horace Thompson is now absent from the State of Minnesota and cannot be consulted with regard to the institution of this suit.

Wherefore your orators humbly pray that by the decree of the court herein the said St. Paul and Pacific Railroad Company, and the said First Division of the St. Paul and Pacific Railroad Company, and the said George L. Becker may each be required to account in this court of and concerning the said bonds issued under said extension mortgage, and of and concerning the proceeds of the sales of them or any of them, and of and concerning any advances of money made by any person or persons to said defendants, or either of them, upon any pledge or hypothecation of said bonds or any of them, and of and concerning any material purchased with the proceeds of said bonds, or with any advances made on account thereof, for the construction of said extensions or of either of them, and that the court, through its receiver or other proper officer by it appointed or designated for that purpose, take charge of all the trust funds and property in this bill of complaint mentioned, and secure and preserve the same for the benefit and advantage of the bondholders interested therein, and that the court, by or through such receiver or officer, do or cause to be done all such acts and things as may be necessary to be done to secure the title in the said St. Paul & Pacific Railroad Company, so that the same may enure to the security and benefit of the bondholders under said extension mortgage, to the lands granted to said company by the acts of Congress and mentioned in said extension mortgage, and that all of such trust funds and property may be, or so much thereof as shall be necessary for that purpose, disposed of or sold to pay the cost of completing the construction of said extensions, and that after such extensions shall be completed and the title to said lands secured the said extension mortgage may be foreclosed and the said lands may, with all the other property mentioned and described in said extension mortgage, be sold and the proceeds thereof applied to satisfy the outstanding bonds issued under said extension mortgage.

And that pending this suit the court forthwith appoint a re-
688 ceiver of all the property, real and personal, land grants, and franchises of said St. Paul & Pacific Railroad Company covered by said extension mortgage, and also of all the property, real and personal, lands, land grants, and franchises of said First Division of the St. Paul & Pacific Railroad Company, and that said receiver be forthwith admitted into full possession thereof; and that full power and authority be given to him to hold, use, manage, control, and operate the same; and that he may be authorized and instructed to procure advances of money for the speedy and seasonable completion of said extensions, and to secure the repayment thereof, with interest, by preference on the property and franchises of the mortgaged premises and trust funds and on all the property, real and personal, and franchises of said companies, and also to manage such construction and completion of said extensions, so as to complete the same by the 1st of December next, with the usual powers of receivers in like cases; and that the court may, by such other and further orders and directions as it may deem fit and agreeable to equity, preserve the trust funds and mortgaged premises, and the rights of the bondholders as beneficiaries, from loss or prejudice; and that the defendants may be enjoined and restrained from doing or suffering any act or thing in respect of said mortgaged premises, or in prejudice of the plaintiffs' rights and demand, pending this action.

And that your orators may have such other and further relief in the premises as may be meet and just. And that each of the said defendants, or such of them as may be served with process or appear herein, may be required, without oath, such oath being hereby expressly waived, to answer all and singular the matters hereinbefore stated.

May it please your honors to grant unto your orators the most gracious writ of subpœna of the United States of America, to be directed to the Northern Pacific Railroad Company, the St. Paul and Pacific Railroad Company, the First Division of the St. Paul and Pacific Railroad Company, Edmund Rice, Horace Thompson, and Geo. L. Becker, defendants, and each of them, thereby commanding them, and each of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before your honors, in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet; and that the like process may issue to the said defendants Russell Sage, Walter L. Cutting, Samuel J. Tilden, George T. M. Davis, John P. Yelverton, and William G. Moorhead, whenever and as often as they, or either of them, shall come or be found within
689 this district, in like manner commanding them, or either of them, so coming or found within this district, at a day, and under a penalty, therein to be specified, to be and appear before your honors in this honorable court, then and there to answer all and singular the premises, and to stand to, perform, and abide by such order and decree therein as to your honors shall seem meet; and your orators shall ever pray.

GEO. L. OTIS,
GILMAN, CLOUGH & WILDE,
GILFILLAN & WILLIAMS,
Plaintiffs' Solicitors.

J. M. GILMAN,
Of Counsel.

STATE OF MINNESOTA, *ss:*

John S. Barnes, of the city of New York, being duly sworn, deposes and says that he is one of the complainants in the foregoing bill of complaint; that he has heard read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

JOHN S. BARNES.

Sworn and subscribed to before me the 9th day of July, A. D. 1873.

H. E. MANN,
Clerk of said Court.

NOTE.—The following exhibits attached to the original bill of complaint are omitted from this printed copy:

Exhibit A. Contract between the St. Paul & Pacific Railroad Company and the First Division of the St. Paul & Pacific Railroad Company for the construction and equipment of the extension lines, dated April 1 1871.

Exhibit B. Lease of the extension lines by the St. Paul & Pacific Railroad Company to the First Division of the St. Paul & Pacific Railroad Company for 99 years, dated April 1, 1871.

Exhibit C. Mortgage executed by the St. Paul & Pacific Railroad Company, April 1, 1871, to secure the bonds of the First Division of the St. Paul *Paul* & Pacific Railroad Company to the amount of $15,000,000.

690 In the circuit court of the United States for the district of Minnesota, in equity.

JOHN S. KENNEDY, HENRY M. BAKER AND John S. Barnes
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY, The St. Paul and Pacific Railroad Company, The First Division of the St. Paul and Pacific Railroad Company, and others.

STATE AND DISTRICT OF MINNESOTA, *ss:*

John S. Barnes, of the city and State of New York, being duly sworn, deposes and says, that he is one of the plaintiffs in this suit; that he knows the contents of the bill of complaint herein; that the plaintiffs compose the firm of J. S. Kennedy & Co.; that the said firm are the holders of bonds issued under each of the following mortgages described in said bill, to wit, under the mortgages for $1,200,000 upon the branch line, and under the mortgage for $2,800,000 upon said branch line, under the first mortgage $3,000,000 on the main line, under the mortgage for $6,000,000 on said main line, and under the mortgage for $15,000,000 on the extensions. That the said firm has been appointed by a committee of the bondholders under said mortgages in Holland agents for said bondholders in prosecuting this action. That the amount of the said bonds so represented by said firm is not far from $27,000,000, including all the bonds which have been negotiated in Holland through the agents of the companies issuing the same, as deponent has been advised by said committee. That the proposition to have a receiver appointed, as prayed for in said bill, with authority to take possession of

the whole of the trust property covered by said mortgages, and to complete the construction of said extensions, and to secure the lands granted to said St. Paul Company, and to make the cost of such completion a lien in prefer' to the liens of said mortgages upon the property, real and personal, land grant and franchises of every kind included in and covered by said several mortgages, was fully discussed and explained in the correspondence by letter and cable between said committee and the plaintiffs, and that said committee fully concurred in and assented to said proposition, and authorized plaintiffs, on behalf
691 of said bondholders, to do and consent to whatever might be necessary to carry such proposition into effect, and that said committee advised the plaintiffs, by cable message received on or about 25th June last, that a full meeting of said bondholders had been held in Amsterdam, at which meeting said proposition was fully discussed and unanimously consented to by said bondholders, and that it was then as sented to by said bondholders that if such receiver should be appointed, with authority to create such preferred lien, they, the bondholders, would allow to the receiver, on such preferred lien, the moneys required to complete such construction and secure 'he title to said lands. That, in the last cable message received from said committee by plaintiffs, said committee advised plaintiffs that powers of attorney to plaintiffs from said bondholders, authorizing them to act in the premises, were being prepared and executed, and would soon be sent to plaintiffs, and deponent verily believes that he will receive and have such powers of attorney in time for hearing of the application for the appointment of a receiver, but not in time to serve copies thereof on the defendants, and he therefore prays that should he receive the same in time for said hearing he may on such hearing produce and exhibit the same without service of such copies.

JOHN S. BARNES.

Subscribed and sworn to before me this 9th day of July, 1873.
[SEAL.] H. E. MANN,
Clerk of said Court.

DISTRICT OF MINNESOTA, *ss:*

In the circuit court of the United States, in equity.

JOHN S. KENNEDY, HENRY M. BAKER AND JOHN S. BARNES
vs.
THE ST. PAUL AND PACIFIC RAILROAD COMPANY, The First Division of the St. Paul and Pacific Railroad Company, and others.

DISTRICT OF MINNESOTA, *ss:*

Leon J. H. Willmar, being duly sworn, says that he is a resident of Belgium, Europe, and is now in the United States as the representative of the holders of the bonds of the First Division of the St. Paul and Pacific Railroad Company, described in the complaint in this action and negotiated and held in Europe; that he is familiar with the mortgages made by said company and the said St. Paul and Pacific Railroad Company and the bonds issued by said companies mentioned in the bill of complaint herein; that he has been connected with said com-
692 panies in effecting the negotiation of their bonds in Europe since

about the year A. D. 1864, and that it was through deponent that said bonds were placed and the money thereon raised at Amsterdam, Europe; that the aggregate bonded indebtedness of said companies under the mortgages described in the bill of complaint is about $27,000,000, exclusive of the one for $3,000,000, dated Dec. 1, 1870, on said main line, of which latter amount $1,500,000 were turned over to E. D. Litchfield, as stated in the complaint, all of which $27,000,000 of bonds are now held by parties in Holland, Europe, except a few scattering bonds not exceeding in amount $100,000; that the bonds issued under the three branch line mortgages first described in the bill of complaint were all, or nearly all, exchanged for bonds issued under the mortgage on said branch line for $2,800,000, described in the bill of complaint; that the statements in said bill of complaint as to mortgages on said main line and on said extension lines, and the bonds issued thereunder, and the disposal of such bonds, are correct of deponent's personal knowledge; that deponent has a personal knowledge of the disposal of all said bonds in Holland, and that the same are now held in Holland, as above stated; that deponent also knows of said agreement and lease between the said First Division Company and said St. Paul and Pacific Company, dated April 1, 1871, with reference to said extension lines, mentioned in the bill of complaint, and that the averments in the bill of complaint with respect thereto are true of his own knowledge; that the said contract, lease, and the said $15,000,000 mortgage was all one transaction, and that in consideration of the construction of said extension lines pursuant to said contract and extension mortgage, it was believed that said $15,000,000 secured by said mortgage could be negotiated in Holland, and upon the representation and good faith that said extension lines would be so constructed, the said First Division Company procured Messrs. Lippman, Rosenthall & Co., of Amsterdam, Holland, to undertake the negotiation of said bonds; that when the negotiations were had for the placing of said bonds, issued under said extension mortgage, the said firm of Lippman, Rosenthal & Co. had fully agreed upon the terms and were ready on the 1st day of April, 1871, to open the subscriptions for said bonds upon the receipt of proper documents, and that the execution of said documents had been approved by the several boards of directors of said two companies, but that the delivery of said documents was delayed by Mr. George L. Becker, the president of the said First Division Company, until the month of October following, and that by reason of such delay the opportunity for placing the whole issue of said bonds upon advantageous terms
693 was lost, and that there now remains in the hands of said Lippman, Rosenthal & Co. 4,270 of said bonds not placed, and which cannot be negotiated by them, and which are held for advances made by them to said First Division Company to the amount of $900,000; that 30 of said extension bonds are held by said William G. Moorhead.

That said Lippman, Rosenthal & Co. negotiated of said $15,000,000 extension mortgage bonds 10,700 bonds, and of the proceeds thereof $8,000,000 or thereabouts was paid over to said First Division Company, together with said $900,000 advanced by said Lippman, Rosenthal & Co. upon said bonds not sold. That deponent also knows that default was made by said First Division Company to pay the interest coupons of its bonds, issued on the main line, due May 1st, 1873, and to pay the interest coupons of its bonds issued on the branch line, due June 1st, 1873.

That the said St. Paul and Pacific Company and the said First Division Company, and the trustees in said extension mortgage, each and all

neglected to take any steps or measures to secure to the said St. Paul Company the lands to which it was entitled on account of the constructed portion of said extension lines, and that the Northern Pacific Railroad Company made application for a large quantity of the lands to which said St. Paul Company was entitled, and actually obtained patents for about 29,000 acres which belonged to said St. Paul Company, and were pressing its claims for more, and that the said St. Paul Company and First Division Company, and the trustees under said extension mortgage, neglected and refused to interpose any opposition to the demands of the said Northern Pacific Company, and that said St. Paul Company and said First Division Company, and said trustees Becker and Moorhead connived, as deponent is informed and believes, with said Northern Pacific Company, to enable it to secure said lands away from said St. Paul Company; that when the bondholders in Europe got information that said Northern Pacific Company were so securing said lands from said St. Paul Company without opposition, they immediately sent an agent over to the United States to look after their interest in the premises, who employed Mr. Wm. M. Evarts and Charles Tracy, of New York City, as attorneys, to present before the Secretary of the Interior the rights of the bondholders under said extension mortgage to have said land certified to said St. Paul Company; that upon full argument before the Secretary of the Interior, and opposition by said Northern Pacific Company, the said Secretary of the Interior awarded said lands to said St. Paul Company, and decided that said patents had been wrongfully issued to said Northern Pacific Company. That since said decision by the Secretary of the Interior, the said St. Paul Com-
694 pany and First Division Company, and trustees in said extension mortgage, have each and all neglected, and still do neglect and refuse to take the necessary steps to secure to said St. Paul Company the lands affected by said decision, and have not made the entries for the same in the local land offices; that the said Northern Pacific Company owns and holds all the stock of the said First Division Company and of the said St. Paul Company, and for over two years last past have had the entire control and management of said companies through such officers and agents as they saw fit to appoint, and have managed the business and affairs of said companies in the interest of the said Northern Pacific Company, and in utter disregard of the rights and interests of the bondholders under said extension mortgage, and so as to destroy their security under said mortgage, and in utter disregard of the rights of the bondholders under the mortgages upon said main and branch lines of said railroad.

That the bondholders in Europe of mortgages upon the said main and branch lines have been unable to get any satisfactory statement or balance sheet of the affairs or business transactions of said First Division Company for more than two years last past; that the floating indebtedness reported by said First Division Company, appertaining to the branch line alone, May 1st, 1873, amounted to the sum of $441,123.14; that no statement of the floating indebtedness of said main line has been furnished to the bondholders thereof, or to any one for them, during the present year, but it is understood to be very large; that deponent knows of an indebtedness of said First Division Company of over a half a million dollars to DeGraff & Co., contractors for the construction of said extension lines; and deponent further says that he has been informed by the officers and agents of said First Division Company that said company appropriated the proceeds of $1,500,000 of the bonds under said extension mortgage to the completion of said main

line to Breckenridge, and that of the iron purchased for said extension lines with the proceeds of said extension mortgage bonds, said First Division Company turned out $200,000 worth to DeGraff & Co., as a payment to them to that extent on their said contract for the construction of said extension lines, and also sold to the Milwaukee & St. Paul Railroad Company 1,000 tons, together with fastenings pertaining to the same, amounting to $73,918.93, and have hypothecated 17,672 tons at the rate of about $60 per ton. And deponent further alleges that of all the iron purchased for said extension lines, with the proceeds of said extension mortgage bonds (the iron for the whole of said extension lines having been so purchased with the proceeds of said extension bonds), only 12,628 tons have been laid on said extension lines, making
695 about 143 miles of road; that said First Division Company stopped payment to its contractors, DeGraff & Co., who had contracts for the construction of the whole of said extension lines, as alleged in complainant's bill, on the 15th day of August, 1872. That said extension lines are now in the uncompleted condition stated and set forth in the complainant's bill herein. That said First Division Company is wholly insolvent and without credit or means, or disposition to go on and complete said extension lines.

And deponent further says, that the said bondholders in Holland, upon learning the situation of the work upon the said extension lines and the financial condition of said First Division Company, and of the misappropriation of the proceeds of said mortgage extension bonds, and of the disposition of said Northern Pacific Railroad Company to disregard the interests of the bondholders of said First Division and St. Paul Companies, and to subordinate said roads to the interests of the said Northern Pacific Company, had a meeting in Amsterdam, Holland, on the 20th of June last, to determine upon some steps to be taken by them for the protection of their rights and interests as such bondholders. That it was deemed of the utmost importance to secure the completion of said extension lines by the 3d day of December next, so as to secure the lands under the Congressional grant; that it was estimated that it would take about $5,000,000 to complete said lines or more, perhaps $6,000,000. That at said meeting it was resolved that said bondholders would advance the necessary funds to complete said extension lines, provided said work and the management of said main and branch lines could be placed in the hands of a receiver, under the direction of the court, and such advances made payable out of the property and assets of said First Division and St. Paul Companies prior to said mortgages. That J. S. Kennedy & Co. of New York City, the plaintiffs herein, were selected by said bondholders to carry out and effect their wishes in the premises by such action as should be necessary for that purpose, in conjunction with deponent.

And deponent further says that he has personal knowledge of the fact that of the bonds issued under the $3,000,000 mortgage on said main line, of December 1st, 1870, set forth in complainant's bill, $1,500,000 of said bonds were turned over to E. D. Litchfield, as payment for stock claimed to be owned by said Litchfield in said First Division Company and sold and transferred by him to said Northern Pacific Company, and that said mortgage was made and said bonds issued solely for the purpose of making such payment to said Litchfield, and that the balance of said bonds have never been sold or negotiated, and still remain in the hands of the trustees of said mortgage; that by said transaction the said Northern Pacific Company became
696 the sole owners of all the stock of said First Division Company,

and has ever since had the sole management and control of the said company, and has advertised and given out that they were the purchasers of the said lines of road and the same constituted part of said Northern Pacific Railroad.

That since said Northern Pacific Company has got the control of said First Division Company's said road the said road has not been kept in repair, but has been suffered to depreciate, and has greatly depreciated in value and is now badly out of repair, and that it will require large expenditure of money to put said road in condition for business before next winter sets in, and that the security of the bondholders of said company is daily becoming impaired, and nothing but an immediate change in the management of the said road and the control thereof will save said bondholders from irreparable loss.

L. WILMAR.

Sworn and subscribed to before me the 9th day of July, A. D. 1873.

{ U. S. CIRCUIT COURT SEAL, } H. E. MANN,
{ DISTRICT OF MINNESOTA. } *Clerk of said Court.*

In the circuit court of the United States for the district of Minnesota.
In equity.

JOHN S. KENNEDY, HENRY M. BAKER, AND John S. Barnes
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY, The St. Paul & Pacific Railroad Company, The First Division of the St. Paul & Pacific Railroad Company, and others.

STATE AND DISTRICT OF MINNESOTA, *ss:*

William Crooks, of St. Paul, in said State, being duly sworn, deposes and says, that he is a member of the firm of DeGraff & Co., mentioned in the bill in this suit. That said firm of DeGraff & Co. entered into three certain contracts in writing with William G. Moorhead, who was the construction agent of the First Division of the St. Paul & Pacific Railroad Company, one dated the 2d day of October, 1871, and the other two dated October 5th, 1871, by which contracts said DeGraff & Co. agreed to construct the road-bed, including bridges, culverts, and everything necessary for the track on the lines of the St. Paul & Pacific Railroad Company from Sauk Rapids to Brainerd, commonly known as the Brainerd extension, a distance of about sixty-one miles, and to furnish and lay the ties on the same, and lay the track and surface the same, and have the same completed on or before the 1st day of
697 June, 1872, and also inlike manner to construct the line of road and lay the iron thereon from St. Cloud to St. Vincent, a distance of three hundred and sixteen miles, and to have the same completed by the 3d day of March, 1873. That said Frst Division Company were by said contract to furnish all iron rails, fastenings, frogs, switches, and spikes, as the same should be needed in the progress of the work, and said contractors were to be paid on the 15th day of each month, for the work done the previous month, less ten per cent. to be retained as security for the performance of such contracts, the amounts to be retained not to exceed for the Brainerd extension twenty thousand dollars, and on the other line one hundred thousand dollars, such payments to be made on the monthly estimates of the engineer of said com-

pany. That said contractors were ready, able, and willing to perform, and would have performed, said contracts on their part within said times, but that after commencing work on said Brainerd extensions, very soon after making said contracts, said First Division Company, in the exercise of a power reserved to it in said contracts, ordered said DeGraff & Co. to suspend work on said extensions, and said DeGraff & Co. were not allowed by said company to resume said work until June, 1872.

That said DeGraff & Co. commenced work on said St. Vincent extension immediately after the making of said contracts, and continued the prosecution thereof until about October, 1872. And also after resuming the work on the Brainerd extension continued the same till October, 1872. That said First Division Company made payments for work done under said contracts up to the 30th of June, 1872, after which they failed to make any further payments upon estimates or otherwise, except as hereinafter stated. But that notwithstanding said failure said DeGraff & Co. continued to prosecute said work under said contracts until about October 7, 1872, as hereinbefore stated, under the constant assurance of said Moorhead and George L. Becker, the president of said company, that the money would be paid immediately. But that instead of said payments said company, on or about October, 1872, gave said DeGraff & Co. written notice to wholly suspend work on said extension lines. That at the time of said suspension, in October said company owed said DeGraff & Co. for work done under said contracts, exclusive of the said ten per cent. retained, upwards of $684,000, and that the ten per cent. retained then amounted to $120,000. That about the time of such suspensions said company paid said DeGraff & Co. $155,000 on account, which money said company raised, as deponent was informed by said Moorhead, by hypothecating the iron rails which said company had purchased to construct said extension lines. In December, 1872,
698 said First Division Company made a further payment to said DeGraff & Co. on account of said work of $50,000, which money said First Division Company raised by sale to the Milwaukee & St. Paul Railway Company of iron rails purchased for the construction of said extensions, as deponent was informed by said Becker. That about the same time said Moorhead, under a resolution of the board of directors of said First Division Company, turned over to said DeGraff & Co. 2,700 tons of iron rails, purchased for such construction, at the price of $202,500, to be applied as a payment for said work.

That in addition to the amount due said DeGraff & Co., under the estimates of the engineer, there is also due them from said First Division Company the further amount of over $140,000 for work done, but not included in such estimates, and for supplies furnished and money paid out at the request and upon the order of said First Division Company, all in connection with the work under said contract.

That there is now a balance due said DeGraff & Co. from said First Division Company, on account of the aforesaid matters, including interest to July 1, 1873, over $536,000, after deducting all the said payments.

That said DeGraff & Co. have at all times been prepared and ready and willing, in case the amounts so due them should be paid up, and future payments promptly made, according to the terms of said contract, to go on and complete the construction of said extension, and that by a provision in each of said contracts they have the right to complete such construction whenever the work is resumed. That said DeGraff & Co. can complete such construction by the third day of December next, provided they could commence such work on the first day of

August next, and provided the iron rails, &c., should be promptly furnished as needed. That they now have on hand all the ties necessary to complete the entire extension, and have all the necessary bridge material now prepared and ready to be set up, for the whole of said extensions, and all other facilities for doing the work within the time above specified, all said ties and bridge material never having been delivered to said First Division Company. That since the suspension of said work in October, 1872, the said First Division Company have not authorized said DeGraff & Co. to resume said work, and have at all times refused to pay said balance due DeGraff & Co., and have notified them that said company could not and would not go on with said work.

That at the time of said suspension in October there had been the iron rails laid on 143½ miles of said extensions, as follows: On the Brainerd extension 4½ miles, and on the St. Vincent extension 35 miles westward from St. Cloud, and from Glyndon, at the crossing of
699 the Northern Pacific Railroad, northward 92 miles and southward 12 miles, leaving 237 miles to be ironed; of this 237 miles at least three-fourths is graded ready for the ties, and that the balance of the grading is comparatively light work.

That deponent is, and has been since 1858, familiar with the country through which said St. Vincent extension runs, and that the lands to which said Saint Paul and Pacific Railroad Company would become entitled by the completion of said extension by the 3d day of December are of a very superior quality, unsurpassed in richness and facility of cultivation by any lands in the State of Minnesota, and with said extension completed would be worth at least six dollars per acre. That deponent is familiar with the land grant acts pertaining to said extensions, and that by the completion of such extensions by the 3d day of December next, said Saint Paul Company would acquire about a million and a half of acres, which it will lose unless such extensions are completed by said date.

That the iron laid on said extensions was of the pattern of 88 tons to the mile, and would cost here about $90 per ton, making the whole cost of the iron laid $1,136,000, and that the cost of the balance of iron rails necessary to complete would be, at that rate per ton, $1,923,000; and that the cost of the fastenings, spikes, frogs, switches, and other necessary appurtenances would be of a value of $2,500 per mile.

That deponent is a civil engineer by profession, and has been connected with the construction of railroads in Minnesota since 1857.

That the construction of said extension lines will add greatly to the value of the branch line of the First Division St. Paul Company, and will also add largely to the value of the lands of the main line First Division St. Paul Company, by giving greater facilities for shipment of grain and farm produce to lands now upon the extreme eastern limits of the said main line grant. The present constructed portions of the said extension lines will be of little practical value unless the whole be completed, because of such portions being in separate and detached pieces, and not accessible by any lines now owned or controlled by either the main or branch First Division of St. Paul Company, except the Northern Pacific Company, whose interests are antagonistic to said extension lines.

That a large portion of the land grant of the St. Paul & Pacific Company will fall to the Northern Pacific Company if said extensions are not completed by the 3d day of December next; and that said Northern Pacific Company has the control and management of the First Division Company and the St. Paul & Pacific Company, and owns a controlling

interest in the stock of the same, and in the opinion and belief of
700 deponent, is managing said companies to the prejudice of the bondholders of said companies and of said roads, and in the interest of the Northern Pacific Company.

The First Division Company has paid DeGraff & Co. for work done by them and materials furnished under said contract $1,458,572.86 and no more, including the 2,700 tons of iron rails hereinbefore mentioned.

WM. CROOKS.

Subscribed and sworn to before me this 9th day of July, 1873.

[SEAL OF COURT.] H. E. MANN,
Clerk of said Court.

701 State of Minnesota, district court, county of Ramsey.

JESSE P. FARLEY, RECEIVER, &C.,
against
CHARLES A. DEGRAFF & OTHERS.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

I, Edward D. Cowman, a notary public of the State of New York, in and for the city and county of New York, do hereby certify that the deposition of Harris C. Fahnestock hereto annexed was taken before me at the law office of Mess. Butler, Stillman & Hubbard, Trinity Building, No. 111 Broadway, New York City, by and pursuant to the authority given in and by a stipulation subscribed by the solicitors of the plaintiff and defendants, Russell & Lewis, respectively, and bearing date December 18th, 1876, and of a further stipulation made between William H. Scott, acting on behalf of said plaintiff, and Thomas H. Hubbard, acting on behalf of said defendants, Russell and Lewis, dated January 19, 1877,
which stipulations are attached to the deposition of William G.
702 Moorhead, taken by me in this action, and to which reference is made by virtue of the stipulation hereto annexed, dated February 6th, 1877, and subscribed by said William H. Scott and Thomas H. Hubbard; that the said witness before examination was duly sworn by me to testify the truth, the whole truth, and nothing but the truth relative to the cause specified in said stipulations, and that the testimony so taken, having been written out, was by said witness read over and there subscribed in my presence, and duly sworn to be true by said witness.

In witness whereof I have hereto set my hand and affixed my official seal this sixth day of February, A. D. 1877.

[NOTARIAL SEAL.] E. D. COWMAN,
Notary Public N. Y. Co.

State of Minnesota, district court, county of Ramsey.

JESSE P. FARLEY, RECEIVER, &C.,
agst.
CHARLES A. DEGRAFF & OTHERS.

It is hereby stipulated for purposes of convenient use that the
703 several depositions taken in this cause before Edward D. Cowman, a notary public, &c., under stipulations of December 18, 1876, and of January 19, 1877, be made up separately; that the original stipulations under which said depositions were taken be attached to the deposition of William G. Moorheard; that the said notary be author-

ized to refer to such stipulations in his certificate attached to each of the other depositions, and that such reference shall have the same force and effect as if such stipulations were all attached to and made a part of each deposition.

N. Y., Feb'y 6, 1877.

WM. H. SCOTT,
Counsel for Pl'ff.
THOS. H. HUBBARD,
Of Counsel for Def't Russell.

State of Minnesota, district court, county of Ramsey.

JESSE P. FARLEY, RECEIVER OF THE ST. PAUL & Pacific Railroad Co.,
agst.
CHARLES A. DEGRAFF AND OTHERS.

704 JANUARY 16TH, 1877.

HARRIS C. FAHNESTOCK, appearing and being duly sworn and examined in pursuance of the annexed stipulation, says as follows:

Direct examination by Mr. HUBBELL:

Q. You were a member of the firm of Jay Cooke & Co.?

A. I was.

Q. And also of Jay Cooke, McCulloch & Co.?

A. I was of both.

Q. For how long?

A. I was a member of both the firms from the date of their organization. But a firm of Jay Cooke & Co. had previously existed in Philadelphia of which I was not a member until 1866.

Q. You knew William G. Moorhead?

A. I knew Mr. Moorhead for many years.

Q. What part did he take in the business of Jay Cooke, McCulloch & Co.?

(Objected to as irrelevant.)

A. He took no part whatever in the conduct of the business of that firm.

Q. What part did he take in the business of the firm of Jay Cooke & Co. in New York?

(Same objection.)

A. Mr. Moorhead took no part in the management of the business of that house.

705 Q. While he was a member of these firms was he engaged in any other business?

A. He was not in any partnership or regular business, to my knowledge, but he had various interests and occupations distinct from his connection with the firm.

Q. What were some of them?

(Same objection.)

A. I recollect that he was for a number of years president of the Philadelphia & Erie Railroad; he was also an officer of several other corporations in the State of Pennsylvania; I think of one or more coal companies, and I think of one of the canal companies of the State.

Q. Did he account to the firm, or was he required by the firm to account for the moneys that he made, if any, in these other occupations?

(Same objection.)

A. The firm had no interest whatever in any of them, and only a general knowledge that he was so engaged.

Q. What did you know, say in October, 1872, or at any time before that, of Mr. Moorhead's relations with the St. Paul & Pacific Railroad Co. or the First Division of that company, or both of them?

(Same objection.)

706 A. I only knew that Mr. Moorhead, by reason of his connection with the Northern Pacific Railroad as a director, had come into certain relations with the St. Paul & Pacific R. R., of which the Northern Pacific Co. had obtained control; and that on behalf of the Northern Pacific R. R. Co. Mr. Moorhead was interested in the management and construction of the St. Paul & Pacific R. R. Co., or some part of it.

Q. What interest had the firm of Jay Cooke & Co. or Jay Cooke, McCulloch & Co. at that time in the St. Paul & Pacific R. R. Co., First Division, or the St. Paul and Pacific Railroad Co.?

(Same objection.)

A. None whatever.

Q. Was there, or was there not, any agreement or contract by which they could have called on Mr. Moorhead for an account of profits, if he made any, from his connection with those roads?

(Same objection.)

A. None whatever.

Q. At that time, in the fall of 1872, you had the principal management of the New York business of Jay Cooke & Co.?

A. I had.

707 Q. Had you at that time seen the mortgage made by the St. Paul & Pacific R. R. Co. in April, 1871, or the bonds that it was made to secure, or the construction agreement (so called) of the same date between the First Division Co. and the St. Paul & Pacific R. R. Co., or the lease from the St. Paul & Pacific R. R. Co. to the First Division Co. of the same date?

(Same objection.)

A. I believe I have never seen any of these documents up to this time.

Q. What did you know about their existence in the fall of 1872?

A. I never had any specific knowledge of the affairs of the St. Paul & Pacific R. R. Co. I only knew in a general way of their relations with the Northern Pacific R. R. Co.

Q. Before the fall of 1872, had the firm of Jay Cooke & Co. made any advances to Moorhead, or to any one, to aid in the construction of the extension lines of the St. Paul & Pacific?

(Objected to as incompetent.)

A. None, I believe, until September, 1872.

Q. What was done then?

A. At that time an allowance was made to Mr. Moorhead as construction agent upon the pledge of certain railroad iron.

Q. Was an account opened with him by the house of Jay Cooke & Co. in New York?

A. Such an account was opened in September, 1872.

708 Q. With him individually?

A. With Mr. Moorhead as construction agent.

Q. What were the first transactions in that account?

A. The account seems to have commenced with payment of a draft on September 5, which, if I recollect aright, was for the payment of

either duties or freight upon certain railroad iron imported for the St. Paul & Pacific R. R. Co.

Q. What were the first deposits to the credit side of the account?

A. The first deposits on the credit side of the account were items of about $68,000 and $73,000, representing proceeds of loans by the N. Y. Guaranty & Indemnity Co. to said Moorhead, construction agent.

Q. Then he deposited the proceeds of that loan with the house of Jay Cooke & Co. here and drew against it, did he?

A. Yes, sir.

Q. Then, afterwards, in September, there was a deposit of proceeds of sale of iron made by Mr. Moorehead to Vibbard, Foot & Co., wasn't there?

A. Yes, sir.

Q. Later still, in October, 1872, Jay Cooke & Co. here loaned Moorhead on some rails, did they not?

709 A. On October 7 Moorhead's account is credited with a loan of $226,000 on account of rails.

Q. That is the proceeds of what?

A. That is the proceeds of a sterling loan of about £40,000.

Q. That was a loan of £40,000 sterling bills of exchange to Moorhead?

A. Yes, sir.

Q. Can you say what was pledged against that loan of £40,000?

A. As security for that loan Moorhead pledged about 4,000 tons of rails, consisting of cargoes or parts of cargoes of the following-named vessels: "Presto," "Nancy M." "W. T. Hatfield," and "Blue Jacket."

Q. Do you know anything of a sale of that iron, in April, 1873?

A. In April, 1873, Moorhead, construction agent, sold to Vibbard, Foote & Co. the 4,000 tons of rails before mentioned, together with another invoice of about 500 tons, being the cargo of the ship "Familius Minde."

(Objected to as incompetent.)

Q. What was done with the proceeds of that sale?

A. The proceeds of that sale likewise went to the credit of Moorhead, construction agent.

Q. The amount was what?

710 A. $249,710.25.

Q. Do you know anything of that iron that was sold in April being afterwards pledged by Vibbard, Foote & Co. to Jay Cooke, McCulloch & Co.?

(Objected to as incompetent.)

A. I know that it was subsequently pledged by Vibbard, Foote & Co.

Q. Was there any custom on the part of Jay Cooke & Co. to take or hold for the benefit of Jay Cooke, McCulloch & Co. securities against bills that they drew on that house?

(Objected to as incompetent and irrelevant.)

A. It was constantly done.

Q. Do you know whether Lippman, Rosenthal & Co., of Amsterdam, were advised of the sale or pledges of the iron that you have spoken of?

(Objected to as incompetent.)

A. I am not aware that they were. I should not be likely to know if they were advised.

Q. At the time of the pledges or sales that you have mentioned, or either of them, did you know that Lucas H. Weetzen or any parties, in

Amsterdam or elsewhere, claimed any interest in the iron that was mentioned?

(Objected to as incompetent and irrelevant.)

711 A. I did not.

Cross-examined by Mr. SCOTT:

Q. Mr. Fahnestock, what did you understand to be indicated by the term construction agent in respect to Mr. Moorhead?

A. I understood that Mr. Moorhead acted for the Northern Pacific in superintending the construction of this portion of the St. Paul and Pacific R. R. Co., which was to be built, and that he did so under some resolution of the Northern Pacific R. R. Co. asking him to do so.

Q. Did you, or did you not, understand that he was acting in that capacity under any contract, request, or appointment by the St. Paul & Pacific R. R. Co., or by the First Division of the St. Paul & Pacific R. R. Co.?

A. I did not; my impression was that he was acting wholly in the interest of the Northern Pacific R. R. Co., of which he was a director.

Q. Did you have any conversation with him during the years 1872 and 1873, in respect to his relations with any corporation or individual under that designation?

712 A. I can't recollect as to dates. Mr. Moorhead did inform me, or I was informed at some time during the progress of his work, that he had no personal interest, that his connection was only an official one. I can't recollect any specific conversation with Moorhead upon this subject, although I have frequently heard him speak of the St. Paul & Pacific Road, the acquisition of which by the Northern Pacific R. R. Co. was a favorite project of his.

Q. Did you, during the years 1872 and 1873, understand from him or from any other source that he sustained any relations whatever either to the St. Paul & Pacific R. R. Co. or to the First Division of the St. Paul & Pacific R. R. Co.?

A. I had no knowledge. I think the matter was never brought to my knowledge, except in the way of a resolution passed at one time of the St. Paul & Pacific R. R. Co., a copy of which was exhibited to or filed with us at the time of these transactions. That is Exhibit No. 3, of January 10, 1877 (shown witness).

Q. Referring to that resolution, please state whether you did or did

713 not understand from its terms that the First Division of the Saint Paul & Pacific R. R. Co. at that time claimed some interest in that iron?

A. Having never understood the relations of the different branches of the St. Paul & Pacific R. R. Co., I considered this resolution simply authority to hypothecate the rails which were then pledged for our advances.

Q. Did you or did you not understand at that time that the rails referred to in that resolution were purchased for the purpose of being used in the construction of the branch or portion of the St. Paul & Pacific R. R. Co. referred to in that resolution?

A. I knew that the rails then arriving from Europe were to be used in the construction of some part of the St. Paul & Pacific R. R. Co., without knowing specifically which part; and furthermore that the moneys required by Moorhead were needed to a certain extent to pay the duties and freights upon these rails as they arrived.

Q. How did you ascertain the fact just stated?

A. Because Moorhead authorized certain persons to pay the duties

and freights upon the cargoes as they arrived, and either drew the money from us by draft or had the bills presented to us for payment, I don't recollect which.

714 Q. You were in constant communication with Moorhead during the years 1872 and 1873, were you not?

A. In frequent communication.

Q. And, as you have stated, had frequent conversations with him touching his business as construction agent for these roads, or one of them?

A. I can't say that I had frequent conversations. I was absent from the country for a number of months in 1872.

Q. Please state the circumstances under which the resolution Exhibit 3, January 10, 1877, was filed with Jay Cooke & Co., as you stated.

A. I believe that it was filed with or exhibited to Jay Cooke & Co. at the time the first loan was made.

Q. Under what circumstances, and for what purpose?

A. Simply to attest Mr. Moorhead's authority to make the hypothecative.

Q. How came Jay Cooke & Co. at that time to require from Moorhead that evidence of authority?

A. They would naturally require it knowing very well that Moorhead was not the owner of the railroad himself, and that he borrowed

715 the money in an official capacity, and they required it of him as they would of any other borrower.

Q. You have referred in your direct examination to a sale by Moorhead of the whole or a part of the iron pledged by him to Jay Cooke & Co. to the firm of Vibbard, Foote & Co. at a subsequent date. Did you know the details of that sale by Moorhead to Vibbard, Foote & Co., and have you any knowledge of the manner in which the transaction was carried out?

A. My recollection is only revived by the affidavit I have in my hand. Vibbard, Foote & Co. corresponded directly with Mr. Moorhead, so that the particulars of that transaction were not within my personal knowledge. They corresponded directly with Mr. Moorhead.

Q. Did you or did you not know that at the time of that transaction Vibbard, Foote & Co. was in some way furnished by Jay Cooke & Co. with the means of paying for that iron?

A. A loan was made to Vibbard, Foote & Co. by Jay Cooke & Co. on the security of the same rails.

Q. At the same time?

A. At the same time.

Q. And for the same amount?

A. For approximately the same amount.

Q. Which they paid Moorhead for the iron?

A. Yes, sir.

716 Q. Were you or were you not informed in and prior to September and October, 1872, that Mr. Moorhead as construction agent was in need of large sums of money to pay for work and construction claims of various kinds upon the Brainard and St. Vincent extension lines of the St. Paul & Pacific R. R. Co.?

A. I was.

Q. Please state, if you know, what steps Mr. Moorhead took as such construction agent to obtain the money needed for that work.

A. I know in a general way that Mr. Moorhead was promised or had reason to expect large remittances of money from Europe which he failed to receive, and that on account of his failure to receive them he was

obliged to borrow money as best he could, commencing with the Guaranty and Indemnity Co., for the purpose of meeting his pressing wants.

Q. Did you or did you not at this time, at the time of the pledge in question, understand that he was largely in arrears in regard to payment for work already done upon the extension?

A. I probably did know in a general way, because, as I stated, I had heard that he had been disappointed in his remittances.

Q. Did you or did you not know at that time that the money
717 so obtained was to be applied in liquidation of the amounts so due and in arrears in whole or in part?

A. I think the money was applied in part for the payment of freights and duties, and the balance to disbursements upon the road on account of construction.

Q. Did you or did you not know at that time that claims were made against him by employés upon the road for work already completed by them?

A. I recollect that Mr. Moorhead was fearful of destruction of property and damage to the interests of the company by reason of delay in payments due upon the line.

Q. Did you understand that any portion of the money furnished by Jay Cooke & Co. was to be applied in liquidation of the amounts due these employés?

A. Yes, sir; I knew in a general way.

Q. Will you look at the printed affidavit now shown you, at pages 170 to 177, in blue numbers, and state whether that is a copy of an affidavit made by you on the 25th day of November, 1873, before Alexander Cameron, notary public?

A. It is.

Q. And, of course, the facts stated in that affidavit were true, to
718 your knowledge at that time?

A. They were.

Q. When the matter was fresh in your recollection at that time?

A. Yes, sir.

Q. Did you ever see or know of the circumstances of the construction contract of May 12th, 1871, between Mr. Moorhead and the First Division of the St. Paul & Pacific R. R. Co.?

A. To the best of my recollection I have never seen any contracts made by Mr. Moorhead in that connection.

Q. Did you ever see any of the shipping or custom-house documents, or documents under which the consignments to Mr. Moorhead of the iron by the "Presto," "Nancy M.," & "Familius Minde" were made?

A. I have no recollection of ever seeing any of the papers mentioned. They would not in the usual course come under my notice at all or into my possession.

(Mr. Scott offers in evidence the affidavit referred to by the witness, sworn to before Alexander Cameron, notary public. Said affidavit is marked Exhibit 1, of this date, for plaintiffs, and is hereto attached.)

H. C. FAHNESTOCK.

Sworn before me this day of February, A. D. 1877.
719 [NOTARIAL SEAL.]

E. D. COWMAN,
Notary Public N. Y. Co.

720 Page 169. *C. Mem. of R. R. iron.*

IRON RECEIVED.

Total amount received as per invoices	33,035–13–2– 7

LAID DOWN, SOLD, AND PLEDGED.

Laid in track, about	13,200– 0–0– 0
Sold Milwaukee & St. Paul R. R. Co	1,010–16–1– 9
De Graff & Co., Glynden	1,700– 0–0– 0
" " Duluth	1,000– 0–0– 0
G. L. Becker, president	100– 0–0– 0
B. S. Russell	900– 0–0– 0
Erie & Western Transportation Company	788– 0–0– 0
N. Y. Guaranty & In. Co. (afterwards bought by V., F. & Co.)	2,900–17–0–20
Vibbard, Foote & Co., Sept. 24, 1872	6,795–14–2– 8
Sterling loan (afterwards sold with additional lot to V., F. & Co), in all	4,540– 3–2–26

721 Page 170. N. Y. supreme court.

LUCAS H. WEETZEN AND O'RS
against
THE SAINT PAUL & PACIFIC RAILROAD COMpany and o'rs.

CITY AND COUNTY OF NEW YORK, *ss:*

HARRIS C. FAHNESTOCK, one of the defendants in the above-entitled action, being duly sworn, deposes and says, in answer to the several questions proposed by the plaintiffs in their written request for his affidavit, as follows, viz:

I do not know what rails were bought with the proceeds of the bonds mentioned in the complaint. Neither I nor my firm of Jay Cooke & Co. ever had anything to do with the proceeds of said bonds or made any purchases therewith, nor do I know whether 34,000 tons of rails, or more or less, were bought with the proceeds of bonds.

I can only answer the questions proposed by the plaintiffs by assuming that they refer to all iron rails that have ever come from William G. Moorhead, construction agent of the St. Paul & Pacific Railroad Company, into the control of my firm, through whatever channel the same may have come. To save delay and to give the plaintiffs all the
722 information I have, I answer the questions on that assumption.

In and prior to September and October, 1872, William G. Moorhead, as construction agent as aforesaid, was, as he stated and as I am otherwise informed, in need of large sums of money to pay for work and
Page 171. construction claims of various kinds upon the Brainerd and St. Vincent extensions of the St. Paul & Pacific Railroad Company. This money was needed first to prevent the stoppage of work on said extensions, and then to prevent the workmen whose claims were unpaid from destroying the property of the company, as they threatened to do. No money could be obtained from the bankers in Europe who had sold bonds issued by the First Division Company to provide it, nor from any other source in amounts sufficient to meet pressing demands.

Under these circumstances Mr. Moorhead, as agent as aforesaid, applied to Jay Cooke & Co. for assistance, and he, as well as the officers of the First Division Company, promised, as I am informed, to secure or repay Jay Cooke & Co. for any advances they might make by a sale or pledge of the iron in their possession. Thereupon Jay Cooke & Co., on the 5th of September, 1872, opened an account at their New
723 York banking-house with William G. Moorhead, construction agent, and commenced to make him large advances of money for the purposes aforesaid.

As an assurance that such advances were properly secured Mr. Moorhead, soon after said account was opened, delivered to Jay Cooke & Co. a resolution of which the following is a copy, viz:

Resolved, That William G. Moorhead, construction agent, be, and he is hereby, authorized to pledge, hypothecate, sell, or dispose of the iron rails of this company now in New York or elsewhere, or hereafter to arrive, for such sums and upon such terms as are in his judgment best for the interests of this company, for the purpose of raising the money necessary to meet past and future estimates for construction account St. Vincent and Brainerd extensions, and for duties, freights, and advances same account.

The foregoing is a true copy of a resolution passed by the board of
Page 172. directors of the First Division of the St. Paul & Pacific Railroad Company, at a meeting held in Chicago September 17th, 1872.

[CORPORATE SEAL OF THE COMPANY.] GEO. L. BECKER,
President.

Attest:
SAMUEL S. BREED,
Secretary.

724 Under authority of this resolution, and to raise money to meet our advances for the purposes aforesaid, Mr. Moorhead, as construction agent, on the 24th day of September, 1872, sold to Vibbard, Foote & Co., iron merchants, of New York City, for the sum of $407,743.71, the following invoices of rails, to wit:

Ex. Caravan, 9,919 bars T				1,965–3–3–5
" Kate Crosby, 4,707	"	"		963–6–1–8
" Rebus 4,066	"	"		800–14–2–18
" Blue Jacket 5,042	"	"		1,000–6–2–8
" Max 4,173	"	"		832–16–1–5
" Abraham Skalle, 2,483	"	"		490–3–3–0
" Patmos 3,897	"	"		771–3–0–20
				6,795–14–2–8

On the same day Vibbard, Foote & Co. gave Mr. Moorhead their check on the [illegible]cers' Bank for the said sum of $407,745.71 for said rails. This check was delivered by Mr. Moorhead to Jay Cooke & Co., and by them passed to the credit of his account as construction agent. On the same day Jay Cooke & Co., to enable Vibbard, Foote & Co. to make their said check good, advanced to them the sum of $407,743.71 cash, which was charged upon the books of Jay Cooke & Co. to a special account, called Iron Account No. 2, and as security for the payment of which Jay Cooke & Co. received from Vibbard, Foote & Co. the rails
725 above mentioned, or documents representing them. At the time of the above-mentioned transaction I was in Europe,
Page 173. and therefore cannot state the facts from my own personal knowledge exclusively.

In addition to the rails above mentioned, Jay Cooke & Co. received others that had been in the possession or control of Mr. Moorhead, as follows, viz:

On the 8th of October, 1872, Jay Cooke & Co. loaned to said Moorhead, as construction agent, for the purposes and on the assurances and authorization above mentioned, forty thousand pounds in sterling bills of exchange, drawn upon Jay Cooke, McCulloch & Co., of London, England, and as against such bills credited the aforesaid account with said Moorhead, as construction agent, with two hundred and twenty-six thousand dollars currency. To secure this advance, the said Moorhead, on the same day, pledged to Jay Cooke & Co. about four thousand tons of rails, which I believe to be described as follows, viz:

Ex. Presto, 4,192 bars T	825-2-0-0
" Nancy M., 5,916 " "	1,167-12-2-17
" W. T. Hatfield, 6,291 " "	1,240-18-2-16
" Blue Jacket, 4,066 " "	797-8-0-10
	4,040-1-1-15

The above loan was carried forward on our books by renewals
726 to April 18, 1873, when it was charged to the account of William G. Moorhead, construction agent as aforesaid.

On or shortly before April 18, 1873, Mr. Moorhead, as agent aforesaid, sold to Vibbard, Foote & Co. the last above-mentioned lot of ..... T 4,040-1-1-15 rails.

With another invoice, viz:

Ex. " Familius Minde," 2,558 bars T	500-2-1-11
In all	4,540-3-2-26

For $249,700.25.

Page 174. At the same time Vibbard, Foote & Co. gave for said rails their checks on the Grocers' Bank for said sum of $249,710.25, which was delivered to Jay Cooke & Co., and by them credited to Mr. Moorhead, as construction agent, in his said account. On or about the same day Jay Cooke & Co. advanced to Vibbard, Foote & Co., to enable them to make good their said check, the sum of $250,000, which was charged in a special account, called "E. Foote, special." At the same time, and as security for the said advance, Jay Cooke & Co. received from Vibbard, Foote & Co. the aforesaid T 4,540-3-2-26 of rails, or documents representing the same.

The two lots of rails above described, viz:

T 6,795-14-2-8 and
" 4,540-3-2-26

comprise all the rails which, so far as I know, or believe, ever in any way came into the hands or under the control of Jay Cooke & Co.
727 after they had been in the hands or under the control of William G. Moorhead, as construction agent or otherwise.

All the aforesaid rails have been disposed of by Jay Cooke & Co. by delivering the same, or the documents representing them, to Vibbard, Foote, & Co. from time to time, as deliveries have been required by the firm last mentioned. I am unable to give the exact dates of such deliveries, which were made by handing over warehouse receipts, bills of lading, or other documents. We had extensive transactions in iron with Vibbard, Foote & Co., besides those above referred to; their

firm imported iron largely on advances and credits furnished by my firm and also by Jay Cooke, McCulloch & Co., of London; as security for such advances and credits we held for ourselves and for said London house the documents representing iron on which advances or credits had been supplied to Vibbard, Foote & Co.; these documents were handed over to that firm as required by them in the course of their business; in this way various documents representing iron were constantly
Page 175. passing from our possession to theirs; neither can I tell from my own personal knowledge or from the books of my firm what sales have been made or sums received from the lots of iron above
728 particularly described. I know that Vibbard, Foote & Co. made sales therefrom and paid some of the proceeds to account of Jay Cooke & Co., and some to account of Jay Cooke, McCulloch & Co., and sold to the last-mentioned firm, at the request of Mr. McCulloch, certain of said iron. This was done for the following reason: The advances of Jay Cooke & Co. upon this above-described and other iron had become so heavy that, to reduce their burden, they made in April, 1873, sterling loans for Jay Cooke, McCulloch & Co. to a large amount on the hypothecation of the above-described and other railroad iron; by the maturing of said sterling bills the house of Jay Cooke, McCulloch & Co. came to have large advances on the aforesaid iron, and to reduce these advances proceeds of sales were paid in and sales were made by Vibbard, Foote & Co. to Jay Cooke, McCulloch & Co. as aforesaid.

In order to answer the plaintiff's questions as fully as possible, I have examined the accounts, and made inquiries of Vibbard, Foote & Co., and from the information thus obtained I state that the two lots of rails above particularly described have, excepting T 1, 647-12-2-4, all been sold, and the proceeds realized as follows, viz:

729 Ex Caravan, sold Oct. 7th, 1872, to Russell & Moulton for $147,389.22 gold, of which $115,420.78 has been paid.

Ex Blue Jacket and Abraham Skalle, sold February 7th, 1873, to Dillon, Clyde & Co. for $70,023 and $34,313 gold, respectively.

Ex Patmos, sold April 3d, 1873, to Knoblauck & Litchenstein, $63,312.93 currency.

Ex Max in part, viz: T 150, sold July 16th, 1863, to Cayuga Lake R. R. Co., for $12.000 currency, of which $2,456.88 has been paid.

Page 176. Ex Familius Minde, a part, viz: T 300-2-2-20, and ex Presto, a part, viz: T 545-1-3-4, sold Aug. 4th, 1873, to Russel & Moulton, for $24,986.15 and $45,378.68 currency, respectively, which has not yet been paid.

The lots ex Kate Crosby, Rebus, part ex Nax, viz: T 682-16-1-5; ex W. T. Hatfield, and ex Blue Jacket, T 797-8-0-10, were sold Oct. 5th, 1873, by Vibbard, Foote & Co. to Jay Cooke, McCulloch & Co. as aforesaid, for $224,018.84 gold, which was credited on sums due from the former to the latter firm. The T 1, 647-12-2-4 of rails above mentioned as remaining unsold by Vibbard, Foote & Co. are, as they inform me, at Buffalo and Duluth, and are the lots ex Nancy M., and parts ex Presto and Familius Minde, above mentioned. All of the rails received by Jay Cooke & Co. have been disposed of by them as is
730 hereinbefore stated.

All these dealings were with William G. Moorhead as construction agent. We made him, in that capacity, large advances of gold and currency, and credited him with the checks of Vibbard, Foote & Co., as aforesaid, and such other sums as he paid. We had no rail account with him. It was a money account. Abstracts of that account are annexed marked "A" and "B," and show, as the fact is, that at the

time of our suspension there remained due from him, as construction agent, to us, over and above all the aforesaid credits, including the checks of Vibbard, Foote & Co., a balance of $101,948.93 currency, and of gold $38,748.15.

The dealings between Jay Cooke & Co. and Vibbard, Foote & Co. relating to the rails inquired of were as above stated. Jay Cooke & Co. advanced money upon the pledge of said rails to enable Vibbard, Foote & Co. to pay for them, and also paid the sums noted in the annexed paper marked "C" for duties and charges on the said rails.

Page 177. They delivered the said rails to Vibbard, Foote & Co. from time to time, the latter firm securing the aforesaid advances by paying in moneys arising from the sale of this and other iron.

I am also informed that Vibbard, Foote & Co. considered the
731 price at which Mr. Moorhead made the said sale of September 24th, 1872, too high for so large a lot of rails, and consented to it only on the understanding that if they should incur a loss in selling Jay Cooke & Co. should protect them.

For this reason, as I am also informed, the rails sold in April, 1873, were put at what was considered a moderate price, and there was at the same time an agreement that our firm would protect them against ultimate losses on the two transactions. I understand also that a portion of the duties to be paid by Mr. Moorhead were upon sale of April, 1873, to Vibbard, Foote & Co., have not yet been paid by said Moorhead.

H. C. FAHNESTOCK.

Sworn to before me this 25th day of November, 1873.

ALEX. CAMERON,
Notary Public, Kings Co., N. Y.

W. G. Moorhead, esq., construction agent, in account with Jay Cooke & Co., New York.

1872.			
Sept.	5.	Draft	$30,245 63
"	6.	"	36
"	16.	$102,667.81, gold, 13 1/16	116,633 41
"	17.	$194.81 " 13 3/8	221 34
"	18.	Philadelphia bal	45,466 06
"	19.	Vibbard, F. & Co	690 00
"	20.	"	690 00
"	21.	Interest	162 66
"	24.	Draft	180,296 47
"	24.	$11,009.18, gold, 14	12,550 46
"	25.	Draft	690 00
"	27.	$3,074.25, gold, 13 1/4	3,500 80
"	28.	Draft	1,380 00
"	30.	"	15,411 53
Oct.	1.	Draft	25,300 00
"	2.	"	22,981 96
"	"	Charges short, gold	201 26
"	"	Notes and interest	21,488 16
"	4.	Becker, draft	100,000 00
"	4.	Draft	220 00
"	5.	" (2)	1,140 00
"	5.	"	253 30
"	7.	"	1,242 00
"	7.	" Becker	100,000 00
"	9.	"	690 00
"	11.	$23,498.18, gold, 13	26,552 93
"	11.	Draft	1,500 00
"	12.	"	13,206 07
"	14.	Notes	20,000 00
"	19.	Edwards	1,311 00
"	29.	R. L. Williams	5,082 87
"	31.	V., F. & Co	12,284 58
Nov.	2.	"	153 50
"	4.	Draft	750 00
"	6.	"	900 00
"	7.	Interest	70 00
"	7.	$42,556.19, 12 1/2	47,769 32
"	16.	N. Y. G. & I. Co	2,216 67
"	16.	"	2,375 00
"	21.	C. H. weigher	25 00
"	27.	Rails, Blue Jacket	5,065 03
Dec.	3.	$6,947.89, gold, 12 1/16	7,846 76
"	4.	Draft	5,000 00
"	5.	"	750 00
"	5.	Int., Blue Jacket	36 08
"	6.	Draft	300 00

733

1873.			
Jan.	6.	Interest to 1st	473 41
"	6.	E. L. Andrews	5,000 00
"	6.	E. L. Andrews	750 00
"	15.	N. Y. G. & I. Co	1,108 33
"	17.	"	1,187 50
Feb.	1.	Interest	379 50
"	14.	N. Y. G. & I. Co	1,933 33
M'ch	1.	Interest	365 69
"	15.	N. Y. G. & I. Co	2,295 83
"	17.	Settlement loan	7,656 94
April	2.	Interest	445 90
"	14.	N. Y. G. & I. Co	7,997 50
"	16.	"	8,568 75
"	18.	£40,000	230,820 33
"	18.	Loan	226,000 00
May	1.	Interest	564 08
"	31.	"	619 39
June	2.	V., F. & Co	200 00
July	1.	Interest	608 84
Aug.	1.	"	637 17
Sept.	1.	"	644 29
"	18.	"	363 42
			$1,333,906 39
			$101,948 93

1872.			
Sept.	17.	N. Y. G. & I. Co	$68,133 33
"	19.	"	73,000 00
"	24.	V. F. & Co	407,743 71
Oct.	7.	Com. (gold) loan	3,500 00
"	7.	Loan, 200 M. gold	226,000 00
"	26.	Er's on Becker's notes	5 00
Nov.	6.	Interest	168 32
1873.			
April	17.	V., F. & Co	$149,710 25
"	18.	$173,359.63, gold, 17 1/4	203,696 85
		Balance	101,948 93
			$1,333,906 39

734 B.—GOLD.

W. G. Moorhead, esq., construction agent, in account with Jay Cooke & Co., New York.

1872.				1872.			
Sept.	5.	Draft (2)	$44,691 46	Sept.	16.	Bought	$102,667 81
"	6.	" (3)	10,325 33	"	17.	"	194 81
"	7.	"	36,512 52	"	24.	"	11,009 18
"	11.	Nevins & Son	4,210 19	"	27.	"	3,074 25
"		F. E. & Co	1,679 18	Oct.	5.	Sterling	188,430 84
"		T. & B	1,880 04	"	11.	Bought	23,498 18
"		T. W. E. & Co	3,379 09	Dec.	8.	"	6,947 89
"	17.	Interest	184 81	Nov.	7.	"	42,556 19
"	18.	Boyd & Co	5,631 24	"		Loan ret'd	200,000 00
		T. & B	2,369 87			Balance	38,748 15
"	19.	T. E. & Co	2,763 07				
"		Cuba	194 00				
"	24.	"	51 00				
"	25.	Draft	3,074 25				
Oct.		"	5,000 00				
"	3.	Freight	5,399 78				
"	4.	Gold loan	200,000 00				
"	8.	Draft	1,529 24				
"	11.	"	3,498 02				
"	12.	"	5,407 17				
"	15.	Short rail	14 60				
"	18.	Draft (2)	3,445 93				
"	22.	"	2,500 00				
"	23.	"	23,101 92				
"	28.	"	4,503 38				
Nov.	1.	Interest	85 17				
"	9.	Boyd	387 45				
"		"	86 40				
"	11.	Draft	5,469 97				
"	27.	Sterling	6,947 89				
"		*Blue Jacket*	5 50				
1873.							
Jan.	6.	Interest	130 74				
"	21.	Renewal loan	6,203 64				
Feb.	8.	Interest	49 90				
Mar.	1.	"	67 07				
April	1.	"	74 74				
"	18.	"	49 15				
"	18.	Gold, sold	173,359 03				
Aug.	9.	Duties, F. Minde & Presto	11,927 79				
Sept.	1.	" L. Soullards'	19,763 10				
"	3.	*Able*	11,715 48				
"	4.	Excelsior	9,458 19				
			$617,127 30				$617,127 30
		Balance	$38,748 15				

735 C.

Payments, duties, storage, etc., on R. R. iron.

Date.	Paid.	Gold.	Currency.
1872.			
October 7.	Duties	$27,732 60	
" 8.	Brokerage	1,473 89	$48 00
" 14.	Traveling expenses		
April 3.	Duties	6,917 40	
" 10.	Brokerage		663 13
" 17.	Duties	14,116 41	
" 26.	Brokerage		1,294 64
May 5.	Withdrawal entries		7 50
" 7.	Duties	10,896 48	
" 8.	Storage		2,069 65
" 14.	"		2,388 40
" 28.	"		1,055 90
July 11.	Duties	1,080 00	
Sept. 10.	"	10,672 65	
" 10.	Dockage		1,408 36
" 10.	Brokerage		703 65
Oct. 10.	Storage		4,504 55
		$72,889 43	$14,073 78

(Indorsed:) State of Minnesota. District court, county of Ramsey. Jesse P. Farley, receiver, &c., ag'st Charles A. DeGraff & o'rs. Examination of Harris C. Fahnestock. A. Filed February 15, 1877. H. E. Mann, clerk.

736 State of Minnesota district court, county of Ramsey.

JESSE P. FARLEY, RECEIVER, &C.,
against
CHARLES A. DE GRAFF & OTHERS.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

I, Edward D. Cowman, a notary public of the State of New York in and for the city and county of New York, do hereby certify that the deposition of Hugh McCulloch hereto annexed was taken before me at the law office of Mess. Butler, Stillman & Hubbard, Trinity Building, No. 111 Broadway, New York City, by and pursuant to the authority given in and by a stipulation subscribed by the solicitors of the plaintiff and defendants, Russell and Lewis, respectively, and bearing date December 18, 1876, and of a further stipulation made between William H. Scott, acting on behalf of said plaintiff, and Thomas H. Hubbard, acting on behalf of said defendants, Russell & Lewis, dated January 19, 1877, which stipulations are attached to the deposition of William G. Moorhead taken by me in this action, and to which reference is made by virtue of the stipulation hereto annexed, dated February 6, 1877,
737 and subscribed by said William H. Scott and Thomas H. Hubbard; that the said witness before examination was duly sworn by me to testify the truth, the whole truth, and nothing but the truth relative to the cause specified in said stipulations, and that the testimony taken having been written out was by said witness read over and then subscribed in my presence, and duly sworn to be true by said witness.

In witness whereof I have hereto set my hand and affixed my official seal this sixth day of February, A. D. 1877.

[SEAL.]

E. D. COWMAN,
Notary Public, N. Y. Co.

State of Minnesota, district court, county of Ramsey.

JESSE P. FARLEY, RECEIVER, &C.,
ag'st
CHARLES A. DE GRAFF & OTHERS.

It is hereby stipulated for purposes of convenient use that the several depositions taken in this cause before Edward D. Cowman, a notary public, &c., under stipulations of December 18, 1876, and of January 19, 1877, be made up separately; that the original stipulations under
738 which said depositions were taken be attached to the deposition of William G. Moorhead; that the said notary be authorized to refer to such stipulations in his certificate attached to each of the other depositions, and that such reference shall have the same force and effect as is such stipulations were attached to and made a part of each deposition.

N. Y., Feb'y 6, 1877.

WM. H. SCOTT,
Counsel for Pl'ff.
THOS. H. HUBBARD,
Of Counsel for Def't Russell.

State of Minnesota, district court, county of Ramsey.

JESSE P. FARLEY, RECEIVER OF THE ST. PAUL & Pacific R. R. Co., *ag'st* CHARLES A. DE GRAFF AND OTHERS.

HUGH MCCULLOCH appearing, and being duly sworn and examined in pursuance of the annexed stipulation, says as follows:

Q. You were the senior member in London of the firm of Jay Cooke, McCulloch & Co.?

A. I was.

Q. Who were the other resident members?

A. In London?

Q. Yes.

739 A. John Henry Puleston and Francis H. Evans.

Q. And your correspondents in New York were Jay Cooke & Co.?

A. They were.

Q. Was the business of the two firms conducted separately and under separate articles of copartnership?

A. Entirely.

Q. They drew bills of exchange on you?

A. They did.

Q. Was there any agreement between the two houses as to whether these bills should be received or how they should be received?

A. I don't know that there was any positive agreement between us, but there was an understanding certainly that no bills should be drawn upon us that were not fully protected on this side.

Q. Can you say whether or not it had been their habit to take securities for various kinds of bills they drew on you, whether commercial credits, travelers' credits, or bills of exchange in their ordinary form?

(Objected to as incompetent & immaterial.)

A. It was our understanding that such securities were taken by them.

Q. Did you know Francis O. French?

A. I did.

740 Q. What was his relation to the London firm of Jay Cooke, McCulloch & Co?

A. He became the attorney of the firm of Jay Cooke, McCulloch & Co.

Q. He had charge of the foreign exchange department here, did he not, in Jay Cooke & Co.'s house?

A. He had.

Q. And that was the department that had charge of the sterling transactions with the London house?

A. It was.

Q. You came from London to New York in the fall of 1873, did you not?

A. I did.

Q. And when did you reach New York?

A. About the 22d September.

Q. That was within a few days after the failure of Jay Cooke & Co.?

A. It was.

Q. At that time how was the balance of indebtedness between Jay Cooke & Co. and the London firm?

(Objected to as immaterial.)

A. Jay Cooke & Co. were very largely indebted to Jay Cooke, McCulloh & Co.

Q. For what?

A. For drafts drawn upon us in excess of their remittances, chiefly.

741 Q. At the same time the London firm was indebted to the United States Navy, was it not?

A. It was.

Q. For what?

A. For moneys which had been deposited with us as agents of the Navy Department for the payment of such drafts as might be drawn by the paymasters of the United States ships.

Q. Shortly after you reached New York did you have an interview with George M. Robeson, Secretary of the Navy?

A. I had a brief interview with Mr. Robeson, I think, on the day of my arrival.

Q. And did you have an interview with George H. Cutter?

A. No. I don't think I saw Mr. Cutter. I have no recollection of seeing him.

Q. Did you at that time inquire of Mr. French or any one here to find what securities belonging to the London house were in his hands for the indebtedness of the New York house to the London house?

(Objected to as incompetent and irrelevant.)

A. I think I did inquire both of Mr. French and Mr. Fahnestock as to what securities they held for our protection for the large overdraft of their house upon the London house.

Q. What was the fact, if you ascertained the facts?

742 A. I ascertained the facts no further than to be informed by them that they held—that there was held—for us a large amount of iron and some other securities.

Q. Do you know now whether that iron embraced or included any of the iron consigned to William G. Moorhead for the construction of the extension lines of the St. Paul & Pacific Railroad Company?

A. I know nothing about any particular lot of iron, nor did I know anything in regard to Mr. Moorhead's connection with any iron transaction. I know nothing more about it than what I have heard in the course of this investigation. I know that it is claimed that a part of that iron was what was called the Moorhead iron.

Q. Did you make any arrangement with the Secretary of the Navy to secure the debt due to the Navy by your London firm?

A. The arrangements were not made by me personally, but by Mr. French, acting as attorney of the London house.

Q. Mr. French was in communication with you all the time, was he not?

A. He was.

Q. And what he did was approved by you, was it not?

A. Entirely.

743 Q. Do you know of that agreement having been made by Mr. French as attorney? (A paper is shown witness.)

(Objected to as incompetent.)

A. I knew that such a paper had been given by Mr. French.

Q. Well, you know of the agreement mentioned in that instrument. (Paper shown witness is marked Exhibit A, January 10, 1877, for identification.)

A. I knew that an agreement had been entered into.

Q. From the time that agreement was made, September 25, 1873, forward, who held the securities that are mentioned in it?

A. The Secretary of the Navy, or Mr. Cutler in his behalf.

Q. Did you have any other interview with the Secretary of the Navy than that you have mentioned?

A. I did not, personally.

Q. You know the fact that Mr. Edwin M. Lewis, as trustee of Jay Cooke & Co., has made some payments to the Navy Department to reduce that claim that has been spoken of, do you not?

A. Yes, sir.

744 Q. The London firm has also proved a claim against Mr. Lewis as trustee in bankruptcy, has it not?

A. We have proved the claim but it has not yet been audited or admitted by the trustee. There is still a contest over some portion of it.

Q. You understand that a part of it is admitted to be correct?

(Objected to as incompetent.)

A. I don't understand that Mr. Lewis objects to any considerable part of the account.

Q. Has Mr. Lewis paid any dividend on that claim?

A. I think Mr. Lewis has paid a small dividend on the claim. Mr. French can tell you more fully as to that.

Q. Can you say whether the payments made by Lewis to the Secretary of the Navy extinguished or paid in full the Navy claim?

(Objected to as incompetent & irrelevant.)

A. They did not.

Q. Do you know whether the Secretary of the Navy has disposed of the securities or any of them mentioned in the paper I showed you?

A. I know that he has.

Q. Do you know the firm of Williams, Deacon & Co. of London? What interest have they in any of these securities?

(Objected to as immaterial.)

745 A. They have the interest of ownership.

Q. How did they acquire that interest?

A. By purchase and transfer from the Secretary of the Navy.

(Objected to as incompetent.)

Q. Did you know this at the time of this purchase?

A. I did.

Q. Well, does that claim that you have proved in Philadelphia embrace the moneys that you say were due from the London house to the American house at the time of the failure?

(Objected to as incompetent.)

A. It does.

Q. It was for that indebtedness that you made the claims against Mr. Lewis as trustee?

(Same objection.)

A. It was.

Cross-examined by Mr. SCOTT:

Q. Mr. McCulloch, who were the partners of the firms of Jay Cooke & Co. and Jay Cooke, McCulloch & Co. at the time of the transactions in question?

A. All the members of Jay Cooke & Co., excepting J. A. Garland, were members of the firm of Jay Cooke, McCulloch & Co.

746 Q. Mr. Moorhead was a partner in both firms?

A. Yes, sir; Mr. Garland was a member of the firm of Jay Cooke & Co., but not a member of the firm of Jay Cooke, McCulloch & Co.

Q. Was there any arrangement between the firms of Jay Cooke &

Co. and Cooke, McCulloch & Co. whereby it was a condition of the drawing of drafts by Jay Cooke & Co. upon Cooke, McCulloch & Co. that the former firm should hold securities for the protection of the latter firm in the acceptance or payment of such drafts?

A. I don't suppose there was any contract that would cover all the transactions.

Q. Whatever drafts you accepted in London, drawn by Jay Cooke & Co., you accepted or paid upon the responsibility of Jay Cooke & Co?

A. We did.

Q. In your direct examination you stated that the Secretary of the Navy has disposed of a portion of the securities mentioned in this paper (Exhibt A). How do you know that?

A. I know that the Secretary of the Navy held all of the iron and the securities mentioned in that paper for his protection. I know by
747 a conversation I had with the Secretary, although I am not clear on that point, that he disposed of the securities and iron as I have stated. The papers which were executed by the Secretary of the Navy will show.

Q. Have you any other knowledge upon this subject than that stated in your last answer?

A. No other.

Q. How did Williams, Deacen & Co. acquire the interest in the securities mentioned in Exhibit A, that you have referred to in your direct examination?

A. By furnishing the larger portion of the money necessary to pay what was due the Secretary of the Navy.

Q. Did they or did they not acquire that interest by virtue of certain formal instruments of transfer and assignment?

A. They did.

HUGH McCULLOCH.

Sworn before me, this 24th day of January, 1877.

E. D. COWMAN,
Notary Public, N. Y. Co.

748 (Indorsed:) State of Minnesota, district court, county of Ramsey. Jesse P. Farley, rec'r, &c., ag'st Charles A. De Graff. Examination of Hugh McCulloch. A. Filed February 15, 1877. H. E. Mann, clerk.

749 State of Minnesota, district court, county of Ramsey.

JESSE P. FARLEY, RECEIVER, &c.,
against
CHARLES A. DE GRAFF & OTHERS,

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

I, Edward D. Cowman, a notary public, of the State of New York, in and for the city and county of New York, do hereby certify that the deposition of John G. Sibbald, hereto annexed, was taken before me, at the law office of Messrs. Butler, Stillman & Hubbard, Trinity Building, No. 111 Broadway, New York City, and pursuant to the authority given in and by a stipulation subscribed by the solicitors of the plaintiff and defendants, Russell & Lewis, respectively, and bearing date December 18th, 1876, and of a further stipulation made between William H. Scott, acting on behalf of said plaintiff, and Thomas H. Hubbard, acting on behalf of said defendants, Russell & Lewis, dated N. Y., January 19,

1877, which stipulations are attached to the deposition of William G. Moorhead, taken by me, in this action, and to which reference is made by virtue of the stipulation hereto annexed, dated February 6th,
750 1877, and respectively subscribed by said William H. Scott and Thomas H. Hubbard; that the said witness, before examination, was duly sworn by me to testify to the truth, the whole truth, and nothing but the truth, relative to the cause specified in said stipulations; and that the testimony so taken, having been written out, was by said witness read over, and then subscribed in my presence, and duly sworn to be true by said witness.

In testimony whereof I have hereunto set my hand & affixed my official seal, this sixth day of February, A. D. 1877.

[NOTARIAL SEAL.] E. D. COWMAN,
Notary Public, N. Y. Co.

State of Minnesota, district court, county of Ramsey.

JESSE P. FARLEY, RECEIVER, &C.,
ag'st
CHARLES A. DE GRAFF & OTHERS.

It is hereby stipulated for purposes of convenient use, that the several depositions taken in this cause before Edward D. Cowman, a notary public, &c., under stipulations of December 18, 1876, and of January 19, 1877, be made up separately; that the original stipulations under which said depositions were taken be attached to the deposition
751 of William G. Moorhead; that the said notary be authorized to refer to such stipulations in his certificate attached to each of the other depositions, and that such reference shall have the same force and effect as if such stipulations were attached to and made a part of each deposition.

New York, Feb'y 6, 1877.

WM. H. SCOTT,
Counsel for Pl'ff.
THOS. H. HUBBARD,
Of Counsel for Def't Russell.

State of Minnesota, district court, county of Ramsey.

JESSE P. FARLEY, RECEIVER OF THE ST. PAUL & PACIFIC R. R. CO.,
ag'st
CHARLES A. DE GRAFF & O'RS.

JOHN G. SIBBALD, appearing and being duly sworn and examined, in pursuance of the annexed stipulation, says as follows:

Direct examination by Mr. HUBBARD:

Q. Mr. Sibbard, you are in the iron business, I believe?
A. Yes, sir.
Q. And you were one of the firm of Edward Page & Co.?
A. No; I was manager for Edward Page & Co.—manager of their rail department. Their business was iron dealers.
752 Q. Do you know about an agreement between Edward Page & Co. and A. G. Cattell, or the Navy Department, for the purchase of rails in Duluth?

A. Yes.
Q. Who were the parties that personally made the agreement?
A. A. G. Cattell & myself, on account of Edward Page & Co.
Q. Do you know whom Mr. Cattell represented?
A. The Navy Department.
Q. When was it?
A. In the spring of 1875.
Q. What was the agreement?
(Objected to as incompetent & irrelevant.)
A. Mr. Cattell agreed to deliver to us about 1,080 tons of iron at Port Dover during that summer.
Q. Where is Port Dover?
A. Port Dover is in Ontario, Canada.
Q. Did he say what the iron was or where it was?
A. Railroad bars, at Duluth.
Q. What weight rail?
A. Fifty-six pounds to the yard.
(Objected to as irrelevant.)
Q. What were the terms of the agreement—price?
A. Thirty dollars cash on delivery, gold.
753 Q. Duty paid?
A. No duty; to be delivered in Canada in bond.
Q. Did you know where the iron was?
A. Duluth, we understood it to be.
Q. Did you send boats for it?
A. Yes.
Q. At whose request?
A. A. G. Cattell's.
Q. What boats did you send?
A. Two steamers, I believe.
Q. Where did they go from, and where to?
A. I believe they went from Windsor, and they went to Duluth.
Q. Did they get the iron?
A. No.
Q. Do you know why not?
(Objected to as incompetent.)
A. I can't state why not.
Q. Was there a claim for demurrage on a'count of those boats?
A. Yes.
Q. State what you know about it.
(Objected to as incompetent & irrelevant.)
A. Our agent there informed us that he drew a draft, $2,153.45, I think, on A. G. Cattell, which was paid by him.
Q. For what?
A. Demurrage, &c., the boats not receiving the freight.
754 Q. You had hired the boats, as I understand, on account of Cattell, as he was to deliver the iron?
A. Yes.
Q. And the account for demurrage was therefor' re'dered to Edward Page & Co., as the parties employing your boats, and your agents made the draft on Cattell?
A. Presented to our agent.
Q. Agent of Edward Page & Co?
A. Yes.
Q. And he drew upon Cattell as the party who was bound under your agreement to make the payment?

A. Yes.
Q. Do you know whether that draft was paid?
(Objected to as incompetent.)
A. I believe, in November, 1875, we were in formed by our agent it was.
(Answer objected to.)
Q. Did Edward Page & Co. make any other agreement to supply the place of this iron that they did not get?
A. Yes; we had to.
Q. At what rates—better or higher or lower?
A. $3.17 more per ton. It cost us the freight there extra. The iron was bought delivered at Port Dover. We had to supply from
755 here, and at the same price, with freights added. So it cost us there $30 gold, and $3.17 per ton currency for freights.
Q. What did you charge against A. G. Cattell as damages on account of the contract?
A. The difference of freight.
Q. Was there anything else?
A. Not that we charged. But we supplied iron worth $2½ per ton more.
Q. Do you know what the freights were from Duluth to Port Dover?
A. I believe from $3 to $3½ currency per ton.

JANUARY 27, 1877.

Examination of John G. Sibbald continued.

Redirect examination by Mr. HUBBARD:

Q. Mr. Sibbald, has the value of iron in the market fallen or risen since May, 1875?
A. Fallen.
(Objected to by pl'ff's counsel as immaterial.)
Q. Can you say what the market value of these rails that you have mentioned is now?
A. I would say that the value of those rails at Duluth, duty paid, would $30 currency per ton.
Q. Do you mean in bond, or duty paid?
A. Duty paid.
Q. Do you know what the duties are?
A. $15.68 a ton, gold.

756 Recross-examination by Mr. SCOTT:

Q. Mr. Sibbald, did you ever see this iron at Duluth?
A. No.
Q. Mr. Sibbald, was this agreement between yourself, representing Edward Page & Co., and the Hon. A. G. Cattell a written or a verbal agreement?
A. Verbal.
Q. And, as I understand it, this agreement was made between you and him personally?
A. Personally, in account of Edward Page & Company.
Q. The expense of transportation was to be borne by Mr. Cattell?
A. Yes.

By Mr. HUBBARD:

Q. How can you state what the character or value of the Duluth iron was or is, if you have never seen it?

A. Judging by parts of cargoes of the same material that we have had, and knowing the brands and makers of the iron.

Q. You mean that you had some of the iron imported at the same time by the same cargo?

A. Part of the same cargoes.

757 Q. You have bought some of the iron that was at Buffalo, have you not?

A. Yes.

By Mr. SCOTT:

Q. How are you able to state that the iron which was the subject of this arrangement between you and Mr. Cattell was of the same brands and makers as the iron constituting portions of these cargoes which you say you bought?

A. From information derived from the shippers or carriers of the material.

Q. Information given in what way?

A. Oral statements.

J. G. SIBBALD.

Sworn before me this 30th day of January, 1877.
[SEAL.] E. D. COWMAN,
Notary Public, N. Y. Co.

758 (Indorsed:) State of Minnesota, district court, county of Ramsey. Jesse P. Farley, receiver, &c., ag'st Charles A. De Graff and others. Examination of John G. Sibbald. A. Filed February 15, 1877. H. E. Mann, clerk.

759 State of Minnesota, district court, county of Ramsey.

JESSE P. FARLEY, RECEIVER, &C., }
against
CHARLES A. DEGRAFF & OTHERS. }

STATE, CITY AND COUNTY OF NEW YORK, *ss:*

I, Edward D. Cowman, a notary public of the State of New York in and for the city and county of New York, do hereby certify that the deposition of Francis O. French, hereto annexed, was taken before me at the law office of Messrs. Butler, Stillman and Hubbard, Trinity Building, No. 111 Broadway, New York City, by and pursuant to the authority given in and by a stipulation subscribed by the solicitors of the plaintiff and defendants, Russell and Lewis, respectively, and bearing date December 18, 1876, and of a further stipulation made between William H. Scott, acting on behalf of said plaintiff, and Thomas H. Hubbard, acting on behalf of said defendants, Russell and Lewis, dated N. Y., January 19, 1877, which stipulations are attached to the deposition of William G. Moorhead, taken by me in this action, and to which reference is made by virtue of the stipulation hereto annexed, dated February 6th, 1877, and subscribed by said William H. Scott and Thomas H. Hubbard; that the said witness, before examination, was duly sworn by me to

760 testify the truth, the whole truth, and nothing but the truth relative to the cause specified in said stipulations, and that the testimony so taken, having been written out, was by said witness read over and then subscribed in my presence and duly sworn to be true by said witness.

In witness whereof I have hereto set my hand and affixed my official seal this sixth day of February, A. D. 1877.

{ E. D. COWMAN'S NOTARIAL SEAL, N. Y. COUNTY. }

E. D. COWMAN,
Notary Public, N. Y. Co.

State of Minnesota, district court, county of Ramsey.

JESSE P. FARLEY, RECEIVER, &C., *against* CHARLES A. DEGRAFF & OTHERS.

It is hereby stipulated, for purposes of convenient use, that the several depositions taken in this cause before Edward D. Cowman, a notary public, &c., under stipulations of December 18, 1876, and of January 19, 1877, be made up separately; that the original stipulations under which said depositions were taken be attached to the deposition of William G. Moorhead; that the said notary be authorized to refer to such
761 stipulations in his certificate attached to each of the other depositions, and that such reference shall have the same force and effect as if such stipulations were attached to and made a part of each deposition.

N. Y., Feb. 6th, 1877.

WM. H. SCOTT,
Counsel for Pl'ff.
THO'S H. HUBBARD,
Of Counsel for Def't Russell.

State of Minnesota, district court, county of Ramsey.

JESSE P. FARLEY, RECEIVER OF THE ST. PAUL and Pacific R. R. Co., *ag'st* CHARLES A. DEGRAFF AND OTHERS.

FRANCIS O. FRENCH, appearing and being duly sworn and examined in pursuance of the annexed stipulation, says as follows:

Q. You were formerly connected with the house of Jay Cooke and Co., Mr. French?

A. Yes, sir, from the fall of 1870 until the failure; had charge of their foreign exchange department.

Q. What were your relations to the house of Jay Cooke, McCulloch and Co.?

A. The transactions in foreign exchange were joint between the two houses of Jay Cooke and Co. and Jay Cooke, McCulloch and Co., and I had charge of the New York transactions.

762 Q. When bills were drawn or credits given by Jay Cooke and Co. on the London house of Jay Cooke, McCulloch and Co., did you take securities?

(Objected to as incompetent and immaterial.)

A. The credits were all issued upon security which might be cash, collateral, or personal security. Bills were usually delivered against cash, although they were occasionally loaned, as it was called, against collateral or personal security.

Q. Do you recollect the transaction in October, 1872, by which £40,000 in bills on Jay Cooke, McCulloch and Co. were loaned by Jay Cooke and Co. to William G. Moorhead?

A. I remember that during the fall of 1872 such a loan was made to Moorhead upon the deposit of certain iron as collateral, part at Buffalo, part at Duluth, part, I think, in New York, and the balance to arrive.

Q. Look at the papers marked January 10th, 1877, numbers 3, 6, 7, 8 & 9 (annexed to Moorhead's deposition of that date), and say if you have seen those before.

A. There are bills of sale from Moorhead, accompanied by a certified copy of the resolution authorizing the sale by him, which were delivered at the time of making this sterling transaction with the purpose of giving title to the various lots of iron described therein; but the form of the transaction was different; it was not a purchase, so far as we were concerned, but a loan; and the customary form, which was a printed form of loan sterling, was taken instead, although my recollection is that
763 these documents were left with me, that is, filed with the other papers relating to the loan.

(Objected to as irresponsive.)

Q. You have seen those papers before?

A. Yes, sir.

Q. Were they ever handed to you, or in your possession?

A. They were handed to me, and in my possession until I handed them over to you, I think.

Q. When were they given to you?

A. In the fall of 1872, the time of the loan of the £40,000 referred to.

Q. Were any other papers given you as security for that loan?

A. The usual printed form of sterling loan was executed by Moorhead, and this form is really a promissory note payable in sterling.

(Objected to as incompetent.)

Q. Where is the pledge that you speak of—the paper?

A. The course of business would be, on the payment of the loan, to return it to Moorhead. I suppose that was done.

Q. Is it in your possession?

A. No, sir; has not been since April, 1873, the time the transaction was closed.

Q. Can you state from any memorandum, or from recollection, what iron that pledge covered?

(Objected to as only provable by the paper.)

A. 800 tons, Duluth; 1,166 tons, I think, at Buffalo; 1,249 tons 18 cwt. 2 qrs. 18 lbs. in bond, and 797 tons 8 cwt. 0 qrs. 10 lbs. afloat; hadn't arrived by the "Blue Jacket."

764 Q. There was a more formal document made, was there not, than these four bills of sale numbered 6, 7, 8, and 9?

A. Yes, sir; we didn't depend on those.

Q. That more formal document was the pledge that you have spoken of before?

A. It was.

Q. Can you say why that more formal document was made?

(Objected to as incompetent.)

A. Because the transaction made with me was a loan of sterling, and the document conformed to the transaction.

Q. Can you say why these four papers, marked 6, 7, 8, and 9, were made in the form they were?

A. Yes, sir; I assume that they were drawn as evidence of title and as an assignment of the merchandise described therein to whomever might hold them.

Q. And when the loan was actually made you required it to be put in more specific form?

A. In the regular form.

Q. Have you any memorandum to state what securities were mentioned in that regular form?

A. Yes; I have the envelope in which these bills of sale were put away, on which I minuted the amounts and values at $69 a ton, making a total of $240,830.25.

Q. That was the estimated value of the securities?

756 Yes, sir; that conforms to the bills of sale.

Q. State what was hypothecated.

A. The merchandise just described. The "Hatfield" cargo 1,249-18-2-18, at $60, $75,025.98; the "Blue Jacket," 797-8-0-10, 47,844.27; bonded at Buffalo, 1,166 tons, $69,960; bonded at Duluth, 800 tons, $4,800; bonded total, 240,830.25. I had also the "power to hypothecate from the St. Paul R. R. to W. G. M.," which of course means Mr. Moorhe'd, and is the resolution before mentioned.

Q. What part of that iron went to Duluth, and what did you have to represent it?

A. I had the receipt of William G. Moorhead for the Buffalo lot and the Duluth lot, which was not satisfactory; and on communicating with him at a later date I also had rewarehouse withdrawal entries, sent by Moorhead, who was the custom-house consignee at Duluth, so that any other person could enter the merchandise at Duluth in case of need. I see, further, a memorandum stating that Russell, which means B. S. Russell, then of Duluth, care of E. W. Clark and Co., will receipt for the Duluth lot. This Russell afterwards did, executing a receipt drawn up in New York, sent to him for the purpose, being in the form of the ordinary warehouse negotiable receipt.

Q. Where is that warehouse receipt?

A. That was given up at the time the loan was paid, with the other documents, to Moorhead.

Q. Can you say what that warehouse receipt covered?

766 A. The 800 tons at Duluth.

Q. Do you know whether any of this iron that is mentioned as the Buffalo lot in the bills of sale went to Duluth?

A. I don't know of my knowledge—I can't answer that; but I understood that it did.

Q. State what you know about that.

A. All I know is at a later period, when my attention was called to these rails again, there was less iron at Buffalo and more at Duluth, so represented to me.

Q. You held this pledge until April, 1873?

A. At some time in April, 1873, the loan was paid off. Moorhead sold the iron, received a credit for the proceeds to his account, to which this loan was charged.

(Papers marked 10 & 11, January 10, 1877, attached to Moorhead's deposition, shown witness, and he is asked if he recognizes them.)

Q. What are they?

A. Number 10 is a letter from J. Cooke and Co. to George E. Bent, secretary of the St. Paul and Pacific R. R., handing him a memorandum of the proceeds of rails bought by Vibbard, Foote and Co., amounting to $249,710.25. Number 11 is the accompanying memorandum. The letter is in the handwriting of Griffin, the corresponding clerk of the foreign department of Jay Cooke and Co. at that time.

767 Q. Who made this payment in April to the credit of Moorhead's account?

A. Vibbard, Foote, and Co. It is stated in the letter.

Q. Did you afterwards receive any pledge of the Duluth iron?

A. About the same time a similar pledge, sterling loan was made to Vibbard, Foote and Co. of a large amount, and among the collateral pledged for this sterling loan were these items again; but the details of them were somewhat changed as I have stated.

Q. When was the loan to Vibbard, Foote and Co. that you speak of made?

A. On the ninth of April, 1873, previous an arrangement had been entered into between Jay Cooke and Co. and Vibbard, Foote and Co. by which all the iron business in which the firm of Vibbard, Foote and Co. were interested, and which at that time covered importations of iron for sale on this side, was consolidated and carried by making them a sterling loan. It was expected that further amounts would be needed from time to time and renewals would be needed, and on that date, April 9, a general contract was made for such sterling loans, which I have in my hand and produce. At the same date there was a large amount of sterling loaned them on the printed form of sterling loan or sterling note for 60 days. This contract is signed by Emerson Foote, which was the name in which the new rail business was conducted on the books of Jay Cooke and Co. In the same manner some other
768 branch of their business was conducted in the name of Fiske, another member of the firm of Vibbard, Foote and Co. At the time of the payment of the Moorhead loan, a second sterling loan or note was taken from Vibbard, Foote and Co. in the same form as the original one and under this general contract of April 9th. My recollection is that this covered a much larger sum than the Moorhead transaction loan. It covered other lots of iron here in New York.

(Paper referred to made April 9, 1873, offered in evidence and marked "Exhibit 1 of January 11.")

Q. This paper of April 9th was made to secure sterling loaned and to be loaned by whom to whom?

A. By the foreign exchange department, which meant the joint business of Jay Cooke and Co. and Jay Cooke, McCulloch and Co., in sterling to Vibbard, Foote and Co.

Q. This instrument was made before the loan of £40,000 sterling to Moorhead, construction agent, was paid off, was it not?

A. That agreement was made, as my recollection is, on the 9th of April, the time it is dated, while this letter would indicate that the Duluth rails were sold on the 16th. The letter is dated the 18th; my recollection is that when those rails were sold to Vibbard the Moorhead loan was paid off.

Q. After April 18 did you make any sterling loans to Vibbard, Foote & Co., under this agreement of April 9th?

769 A. On April 23d, £125,000 sterling; then on June 15th that loan fell due and was renewed, and we made other loans and renewals at the times stated in the memorandum which I produce.

(The memorandum is put in evidence and marked Exhibit 2 of January 11th, 1877, and is annexed.)

Q. When this agreement of April 9th was made, Vibbard, Foote and Company gave you a schedule of securities pledged at that time, did they not?

A. Yes, sir; for the loan made at that time, £100,000.

Q. When the various other advances or loans were made, they are shown on this paper, Exhibit 2. Did Vibbard, Foote and Co. pledge you property to secure those loans?

A. At the time of each renewal a new schedule and valuation was made whenever there was any change in the securities, and as the amounts increased, which they did toward the end, new property was added.

Q. Was the iron in Buffalo and Duluth pledged as security for any of these loans; and if so, when?

A. It was included in the collateral for the loan of April 23d, that is the second loan made.

Q. Have you any schedule of April 23d?

A. I have and produce it (marked Exhibit 3 of January 11th, 1877).

Q. Now can you say, referring to that schedule of April 23d, what property was pledged by Vibbard, Foote and Co. that was in Duluth?

770 A. Tons 1069-12-2-24.

Q. And that was iron rails imported by what ships?

A. It was imported by three vessels. Ex "Nancy M"., 2989 bars, weighing tons 589-12-3-9. Ex "Presto," 1,422 bars, weighing tons, 280-0-0-24. Ex "Familius Minde," 1015 bars, weighing tons 199-19-2-19, making total of 1,069-12-2-24.

(Objected to as incompetent and only to be proved by the documents themselves.)

A. Represented by a warehouse receipt in form negotiable issued by B. S. Russell at Duluth, the custodian of the iron, and by rewarehouse withdrawal entries, signed by the custom-house consignee.

(Same objection.)

Q. Where are those papers?

A. They were sent to Duluth to complete the export of the rails at the time of their sale, about June, 1875, and have never been returned.

Q. By whom were they sent, and to whom were they sent?

A. They were sent by Hon. A. G. Cattell, acting for the United States, to B. S. Russell, at Duluth, with instructions to enter for export.

Q. The amounts you have last enumerated making 1,069 tons, 12-2-24 don't appear to be all the amounts brought by the "Presto," "Familius Minde," and "Nancy M." mentioned in the schedule Ex. 3. Can you account for the difference?

771 A. The amounts stated in the schedule are correct aggregates of the 3 cargoes. At the time of the pledging they were divided in the way shown by this memorandum. (Produced, marked "Exhibit 4, Jan. 7, 1876.")

Q. Then part of the three cargoes mentioned in Exhibit 3 remained at Buffalo and part went to Duluth?

A. Part was at Buffalo, and the remainder at Duluth at the time, as I understand, as shown in the memorandum.

Q. How did you know that these parts of cargoes by the "Presto," "Nancy M.," and "Familius Minde" that you have specified are the same iron referred to in memorandum of April 23d, 1873?

A. The iron was already in Duluth before this schedule was made, and I only know that this is the designation by which it has always been described—by which has been described the rails represented by Russell's warehouse receipt.

Q. Has this loan of April 23d, 1873, been paid off?

A. There have been some credits on those loans. There was a credit of about £100,000 in the aggregate against the £315,000 balance shown by the paper, Exhibit 2.

Q. The rest has not been paid?

A. The rest has not been paid, and the iron was held as collateral for the balance due.

Q. These various loans mentioned in Exhibit 2 were in the form of sterling bills on Jay Cooke, McCulloch and Co., were they?

772 A. Vibbard, Foote and Co. received credit in their dollar account for the proceeds of sterling bills, drawn by Jay Cooke and Co. on Jay Cooke, McCulloch and Co., which bills were paid by Jay Cooke, McCulloch and Co. to the extent named in the respective loans. When I say account of Vibbard, Foote and Co., the account may have been kept in the name of Emerson Foote; but the parties interested, as understood at the time, were Vibbard, Foote and Co.

Q. What became of the bills?

A. They were sold by Jay Cooke and Co. and paid by Jay Cooke, McCulloch and Co.

Q. When Jay Cooke and Co. failed, who were the creditors, if you know, for the amount of these sterling advances?

A. Jay Cooke, McCulloch and Co.

(Objected to as incompetent.)

Q. How do you know that?

A. Because I have seen the claim proved by Jay Cooke, McCulloch and Co., in bankruptcy, against Jay Cooke and Co.

Q. Did you or not, in your business in the foreign exchange department of Jay Cooke and Co., have daily knowledge of the transactions between the two houses and the way the balance of accounts stood?

A. Yes, sir; I knew the fact, of course.

Q. And you had that knowledge on the 18th September, 1873, at the time of the failure?

A. Yes, sir.

773 Q. Do you recollect Mr. McCulloch's coming from England about that time?

A. He arrived within a day or two after the failure. I think upon the 22d; but I am not clear what the date was.

Q. Do you recollect, at that time, the condition of the account between the Navy Department and Jay Cooke, McCulloch and Co., or did you know then?

(Objected to as incompetent.)

A. The London firm was indebted to the Navy Department to the extent of £180,000 sterling, or more.

Q. Did you see George M. Robeson, Secretary of the Navy, about the time of the failure?

A. I was present at an interview between Mr. Robeson and Mr. McCulloch; in fact, there were a succession of interviews regarding the indebtedness of the London firm to the Navy Department at which I was present.

Q. Do you know whether at any of these interviews Mr. Robeson asked security from the London firm or payments?

A. He requested security for it. He required the deposit of collaterals for the purpose of securing and protecting the foreign account of the Navy Department and for reimbursing the government for any loss thereon, the collateral to be placed entirely at his discretion as to disposition.

Q. Did you make an examination at that time to see what collateral the London firm had that could be turned over to him, or property?

774 A. Yes; I did.

Q. What did you have at that time representing any of the Duluth iron?

A. We had the documents for tons 1069-12-2-24 railroad iron in bond at Duluth.

Q. And those were the lots mentioned by you before as having been pledged by Vibbard, Foote and Co?

A. Yes, sir.

Q. Can you say what documents you had representing those lots?

A. I should say the identical warehouse receipt of Russell and the several rewarehouse withdrawal entries covering 2,989 bars ex "Nancy M.," 1,422 bars ex "Presto," and 1,015 bars ex "Familius Minde."

Q. Do you recognize that paper marked Exhibit A, Jan'y 10, 1877, for identification?

A. Yes, I recognize it.

Q. Who made it?

A. It is in the handwriting of the pay director, Mr. George F. Cutter.

Q. Pay director of the Navy?

A. Yes.

Q. That is, the body of it?

A. Yes; the whole document, except the signatures of Jay Cooke, McCulloch and Co.

Q. Who signed it?

A. It is signed per pro Jay Cooke, McCulloch & Co., F. O. French.

775 Q. That is your signature, is it?

A. Yes, sir.

Q. What does the per pro mean?

A. I had a power of attorney from Jay Cooke, McCulloch & Co.

Q. By whose request did you sign the paper?

A. By the direction of Mr. McCulloch, the principal of the firm, who was present.

Q. And that was the conclusion of the negotiations at that time between Mr. McCulloch and the Secretary?

A. Yes, sir.

(Paper is offered in evidence marked Ex. 1 of January 12th, 1877.)

Q. After you had signed this paper, Exhibit one of this date, what did you do with it?

A. It was left with Mr. Cutter, I think on the 22d.

Q. Then there had been an agreement made on the 22d September?

A. Yes, sir.

Q. And that is the agreement recited on the 3rd page of this sheet?

A. Yes, sir.

Q. And this agreement of the 25th was made as a substitute for that?

A. Yes, sir.

Q. Were the papers that you had representing the different securities scheduled in Exhibit 1 handed over to the Secretary of the Navy or his representative?

A. They were, the bulk of them, on the 22d, except so far as the change is noted.

776 Q. Where has this paper Ex. 1 been since that time?

A. In the custody of the pay-director, George F. Cutter, until I obtained it from him within a week for the purposes of this examination.

Q. After that the Navy Department continued its account with the London house of Jay Cooke, McCulloch and Co.?

A. They did down to January, 1875, about which time it was given to the Seligman Bros., of London.

Q. Did the Navy Department, after September 25, '73, make fur-

ther deposits to the credit of that account with Jay Cooke, McCulloch and Co.?

A. They made a succession of deposits. I know of a deposit of from £80,000 to £100,000 on or about the 20th October, and of about the same amount on the first of November following. I know from recollection.

Q. Did you have any interviews with the Secretary of the Navy respecting these later deposits?

A. Yes, sir; I went to Washington and arranged to deposit still further securities with him, being all the remainder of the securities held on this side, being the remainder of the securities ot the London firm held in America.

Q. Now, from that time on, did you know of any of these securities being sold for account of the Navy Department?

A. They were all sold as opportunity offered.

777 Q. What, if anything, did you have to do with those sales?

A. I had nothing to do with them down to August last, as the conduct of them was intrusted to Hon. A. G. Cattell, of New Jersey, beyond being consulted by him in order that the assent of Jay Cooke, McCulloch & Co. should be given to the disposition of them. In this way I knew of the sales as they took place, and the amounts realized. During the summer, owing to Mr. Cattell's illness, I was designated by the Secretary as his attorney to sell the rest of these, but without compensation.

Q. Do you know of an agreement made between Mr. Cattell and Edward Page & Co. in 1875 with respect to the Duluth rails?

A. I was informed of it at the time. My recollection is that the sale was made before the opening of navigation, but I can't fix the date.

Q. Do you know the terms of that sale?

A. I knew at the time.

Q. You heard Mr. Sibbald's testimony yesterday?

A. I did.

Q. Does your recollection of the terms of sale agree with this testimony?

A. It does, except as to the rate of freight, which I have nothing to verify. Whether that it was $3 or $3.50 I cannot fix. It was a currency rate. I remember that.

778 Q. While Mr. Cattell had charge of sales of these securities, did you make any effort to make sales?

A. I endeavored to find purchasers, and I think everybody who had been connected with the transaction did also. I remember Vibbard's people did.

Q. You say that after last August you had authority from the Navy Department to sell these securities?

A. Yes. I can't say the date of my appointment, but I know that it was as early as August, because in September I made the first important transaction.

Q. Have you had a knowledge of the ruling prices in the iron market since this pledge of September, 1873, was made?

A. Yes, sir. I have known most of the transactions that have been made here through the brokers with whom I have been constantly in intercourse.

Q. Can you say whether the market price for rails of the character of the Duluth iron has risen or fallen since the agreement with Edward Page and Co.?

A. The price of all rails has steadily declined. Rails which sold in the summer of 1875 at about $45 currency sold in the summer of 1876

at from $33 to $35, and I know of a lot of English rails at New Orleans which sold at $30, duty paid. I heard of it from the vendors.

Q. When was this last sale that you mention that you say you heard of?

779 A. It was in the early summer of 1876. I was specially interested in that because we had some rails at New Orleans, situated in the same way, for sale.

Q. Can you say what is the present market price of such railroad iron as this in Duluth?

A. I have had no knowledge of the rail market since September last.

Q. Can you say whether the Navy Department still holds the Duluth rails that you have spoken of?

A. They were sold about the 23d of November, with the remaining securities held by them, to Williams, Deacon and Co., of London, England.

Q. What do you know of that transaction?

A. I know that an offer from Williams, Deacon and Co. came by cable, which was communicated by me to the Secretary, and by him accepted by cable; that the money was paid by Williams, Deacon & Co. through the First National Bank of this city to the assistant treasurer at this city, and the various securities delivered by the Secretary.

Q. What was delivered to represent the Duluth rails?

A. A bill of sale from the Navy Department to Williams, Deacon & Co., at the price of $20 per ton, which I held here for the purpose of this examination.

Q. You have that bill of sale?

A. Yes, sir.

(Bill of sale produced.)

780 Q. You have already said, I think, that the warehouse receipt and withdrawal entries representing the Duluth iron had been sent to Duluth?

A. Yes, sir, by the Hon. A. G. Cattell.

Q. You say that was to carry out the export?

A. If you recall Sibbald's testimony, the contract was to sell this iron at a price delivered in Canada, which of course imposed on Mr. Cattell, acting for the government, the business of exporting it from here to Canada, and the cancellation of the bonds given for the payment of duties on the exportation.

Q. Have you seen the warehouse receipt and withdrawal entries since they were sent to Minnesota as you have mentioned?

A. I have not seen them since they were delivered to Cutter, I think, which was in September, 1873.

Q. At the time when you made this pledge for the London house to the Navy, in September, 1873, what did you know about the claim of the plaintiffs, or of the Amsterdam parties, to the Duluth iron?

A. I never heard of a cloud on the title of those rails until the beginning of the suit by Evarts here—the Westjen suit—which was, I think, about the middle of November, 1873.

Q. Do you know of Edward Page and Company having made any claim for damages on account of that sale?

781 A. They made a claim upon Mr. Cattell, which was embodied in the paper handed you.

Q. Do you know of payments having been made to reduce this Navy account, by Edwin M. Lewis, trustee in bankruptcy of Jay Cooke & Co.?

A. I know that a judgment was obtained by the United States against Lewis, trustee, for the amount of the indebtedness existing at the time of the filing the petition in bankruptcy, which is the account known by Jay Cooke, McCulloch & Co. as Navy account number one; the transactions subsequent to that date having been kept distinct, under the head of Navy account number two.

Q. Do you know of payments having been made by Mr. Lewis under that judgment?

A. I know that payments were made and the decree satisfied.

Q. Do you know whether that payment extinguished the Navy claim?

A. It extinguished the account No. 1.

Q. Which you understand was for indebtedness existing at the time of the failure of Jay Cooke and Co.?

A. Existing on the 25th September, 1873, the date of filing the petition in bankruptcy against Jay Cooke and Co.

Q. Do you know whether the moneys realized by the Navy Department from the various sales of securities, including the sale to Williams, Deacon & Co. of the Duluth iron, extinguished the balance

782 due to the Navy Department?

A. No, sir; it did not.

Q. Do you know fom whose money the demurrage of the two boats mentioned by Mr. Sibbald was paid?

A. It was paid out of the proceeds of other collateral sold, mentioned in the schedule, Exhibit No. 1, of this day.

Q. Do you know whether Mr. McCulloch, or his old firm in liquidation, has paid the balance due to the Navy Department after the payments made by Lewis and the sums realized from these securities?

A. The balance was paid within a day or two after the sale to Williams, Deacon & Co.

Q. By whom?

A. It was paid by Jay Cooke, McCulloch and Co.

Q. Do you know of Edwin M. Lewis having paid a dividend on the claim made by the London house, as due from the American house?

A. He has paid dividends on one set of claims and a partial dividend on another and the principal claim.

Q. Has he paid any dividends since he made his payments to the Navy Department that you have mentioned?

A. The partial dividend was paid in contemplation of paying the final amount due under the decree in October last, I think.

Q. Was it after that decree had been made and arrangements

783 had been made and brought to Mr. Lewis's knowledge for its adjustment?

A. The decree was made early in the spring under a decision of the Supreme Court rendered, I think, in February, 1876. This last dividend was paid October 28th, 1876.

Q. Can you say on what claim this last dividend was paid by Mr. Lewis, and how the proceeds of that payment were applied?

A. One claim made by the London house against Mr. Lewis, as trustee, amounted to the sum of $1,200,000. Mr. Lewis consented to pay a dividend on $420,000 of this, and did make that payment October 28th, 1876. That money was paid to the Secretary of the Navy because the London firm had assigned its claims to him to secure the Navy account called No. 2. That payment was made on the same day that Mr. Lewis made his final payment to the Navy under the judgment I have mentioned.

Q. What personal knowledge have you of these payments mentioned in your last answer, or the negotiations that led to them?

A. The negotiations leading to these payments resulted from an interview between Mr. McCulloch and myself and the counsel of the Secretary of the Navy on the one part, and Mr. Lewis and his counsel on the other part; and the fact that the payments were made was communicated to me by the counsel of the Secretary of the Navy.

784 Q. Before these payments were made, was any statement made up or calculation made showing how the balance of indebtedness stood between the London house and the American house, and between the individual partners of the two houses?

(Objected to as incompetent and irrelevant.)

A. A careful examination and calculation or estimate was made, based on the balance sheets furnished from London, to show the final results of the liquidation of Jay Cooke, McCulloch & Co., as between the individual members of the firm resident in London who are solvent, and the individual members of the firm resident of this country who are in bankruptcy, with the view of seeing whether, if a dividend were paid on the claim made by Jay Cooke, McCulloch and Co. on Jay Cooke and Co., and the London firm then liquidated, there would or would not be a balance due to the individual American bankrupt partners or to the trustee representing them. The result of this examination was to show that in any event, until the payments made on the various claims should realize £113,080-9-8 sterling, there would be nothing due the individual American bankrupt partners. This, after crediting the American partners, or Mr. Lewis representing them, with the payments made to the Navy Department under the judgment, and all dividends made on the McCulloch claim up to that time.

Q. What amount has been paid in dividends to reduce this £113,000-9-8?

785 A. A dividend on $420,000 of 5 per cent. cash; 1,470 shares of Oregon stock which was sold at 20, together with the dividends thereon amounting to 1″ a share, and about $300,000 in Northern Pacific stock, worth say $29,000.

Q. While you were connected with the two houses as you have mentioned what part of their business, so far as you know, did William G. Moorhead attend to?

A. My impression is, that he had charge of no special branch. My impression is, that he was not expected to pay any special attention to the business; his contribution to the firm being his capital.

Q. What to your personal knowledge did he do in connection with the business at New York, done for the New York firm, or for the London firm?

A. Nothing. I don't remember a transaction which he directed.

Examination adjourned to January 19, 1877.

E. D. COWMAN,
Notary Public.

Examination of Francis O. French continued January 19th, 1877.

Q. Is that the bill of sale from Mr. Robeson, Secretary of the Navy, to Williams, Deacon & Co., that you referred to the other day?

786 A. Yes, sir. That is the original.

(Paper produced and marked Exhibit 1, of January 19.)

Q. Was $20 per ton the offer he had by Williams, Deacon & Co?

A. Yes, sir; it was based on an offer which we had had within a few

days from a broker. The broker's offer was not entertained because of litigation.

Q. Have you any knowledge whether the rails referred to there are or are not the same rails that you have referred to before in your testimony as having been imported by the "Presto," "Nancy M.," and "Familius Minde," and pledged by Vibbard, Foote and Co. in the spring of 1873, and afterwards pledged by Jay Cooke, McCulloch and Co. to the Secretary of the Navy in September, 1873?

A. This is the sale of the same lot.

Q. How do you know; what personal means of knowledge have you?

Because this is the lot scheduled in the agreement made with the Navy Department under date of 22d and 25th September, 1873; being at the time of the sale the only remaining lot of rails held by them.

Q. Held by whom?

A. The Secretary.

787 Q. Did you personally have anything to do with negotiating this sale, or procuring the bill of sale?

A. The offer of Williams, Deacon & Co. was communicated by me to the Secretary, and accepted by him to me, on which I sent a cable acceptance to London from Washington at the same time this and other bills of sale were drawn up for the collaterals sold by the Secretary to Williams, Deacon & Co.

Q. Who composed the firm of Williams, Deacon & Co.?

A. Henry Sykes Thornton, Robert Williams, John Deacon, Viscount Kirkaldie Alexander, and William Samuel Deacon.

Q. I asked you during this examination this question, "Do you know whether any of this iron that is mentioned as the Buffalo lot in the bills of sale went to Duluth?" and you answered, "I don't know of my own knowledge. I can't answer that, but I understand that it did." (See page 7.) Have you since been able to ascertain more particularly how the iron was divided as between Buffalo and Duluth?

A. I have since found four papers relating to this loan, which I now produce. The first is a letter from the Treasury Department in reply to one which I addressed with reference to this iron, asking that instructions from it be given to withdraw at Buffalo and at Duluth, the entries originally having been made for the transportation of the whole to Duluth, & it had become desirable to withdraw part at Buffalo in order to have control. Part was then at Buffalo. My application was to withdraw at Buffalo, as recited in the letter. This application was
788 granted through the collector of customs at New York, to whom that letter instructs me to apply. The reason of that was that new entries had to be presented at New York as well as there, otherwise the transportation bond at New York would not correspond with the substituted entries.

Then the particulars of the situation of the rails were obtained from the transportation agents, the Union Transportation Co., I think, and the three papers now produced are the memoranda made by their agent at Buffalo, designating the Union Transportation Co.'s bills of lading of canal-boats, with the proper number of bars, showing for each cargo, the "Presto," "Familius Minde," and the "Nancy M.," the numbers at Buffalo.

At the foot of this memorandum, which is dated Buffalo, Oct. 19, 1872, is the memorandum of the custom-house broker here, dated October 25, that the original entries were cancelled, and the new entries made out as per this statement for Buffalo, and one for balance of original cargo for Duluth, signed by him, J. Kent Boyd. He was the cus-

tom-house broker who had charge of the details of making the original entries and making these substituted entries.

(The four papers referred to are put in evidence and marked respectively Exhibits 2, 3, 4, & 5 of January 19th, 1877.)

Q. Who was H. C. French, agent, whose name appears on those papers?

789 A. He was the agent of the Union Transportation Company at Buffalo.

Q. The figures in the first column on the left hand of each of these 3 sheets are the numbers of the bills of lading, are they not?

A. Yes, sir. Then the name of the canal-boat that took the iron to Buffalo; then the number of bars by each boat; and the figures at the end are the weights in pounds I assume. The lengths are given below.

Q. And the total shows the total at Buffalo?

A. Yes, sir.

Q. There is nothing on these papers, is there, to show in figures what went to Duluth?

A. Yes, sir; there is a pencil memorandum, in handwriting which I don't recognize, but which I presume is the custom-house broker's, subtracting the Buffalo lot from the total cargo, the addition being the number of the bars, with the weight, which were at Duluth.

Q. Does the total cargo by each of these ships, "Presto," "Familius Minde," and "Nancy M.," appear on either of these papers?

A. The number of rails appears in the pencil memorandum referred to.

Q. Can you state from your knowledge, or from any other memorandum that you have, whether these pencil memoranda in fact show correctly what went to Duluth?

790 A. Referring to Exhibit No. 4, of January 11th, 1876, the amount of rails at Buffalo, ex "Nancy M.," is stated at 2,927 bars, which conforms with the statement. The lot ex "Presto" is stated at 2,770 bars, which, deducted from 4,192, the total rails, leaves 1,422 bars at Duluth; and the Exhibit 3 shows from the "Familius Minde" 1,533 bars at Buffalo, and the subtraction showing 1,015 bars at Duluth. These figures correspond with the number of rails stated at Duluth, shown in Exhibit 4 of January 11th, 1877, which was made before I found these papers.

Q. Please refer again to these papers, Exhibits 3, 4, & 5, and Exhibit 4 of January 11, '77, and state what lots described by tons on the last-mentioned exhibit correspond with the lots described by bars as having gone to Duluth on the 3 former exhibits.

A. I understand that 2,927 bars named in Exhibit 5, ex "Nancy M," is the same lot designated in Ex. 4 of January 11 as $\frac{T}{577}$–19–3–8, and that the balance, 2,989 bars, represents the $\frac{T}{589}$–12–3–9 at Duluth; that referring to Exhibit 3, the 2,770 bars at Buffalo, ex "Presto," represents $\frac{T}{545}$–1–3–4 at Buffalo, and the balance, 1,422 bars, represents $\frac{T}{280}$–0–0–24 at Duluth; referring to Exhibit 4, the 1,533 bars at Buffalo represents $\frac{T}{300}$–2–2–20; and the balance, 1,015 bars, represents the $\frac{T}{199}$–19–2–19 at Duluth.

Examination adjourned to January 31st, 1877.

E. D. COWMAN,
Notary Public.

791 JANUARY 31ST, 1877.

Cross-examination by Mr. SCOTT:

Q. Please state all the particulars connected with the sale to Vibbard,

Foote and Co. mentioned in Exhibits 10 & 11, January 10, 1877, referred to in your direct examination.

A. I was not a party in making the transaction, and only know what I have subsequently learned from the record and from hearing others speak of it.

Q. Have you any knowledge or information as to how or from what source Vibbard, Foote and Co. obtained the $249,710\frac{25}{100}$ mentioned in your direct examination as the consideration for the sale in question?

A. How this amount of 249 thousand that you have named was obtained I don't know, but this will probably appear by reference to the books Jay Cooke & Co., of the 16th of April, 1873. The account of Vibbard, Foote & Co., in whatever name kept, received credit within five or six days thereafter for the proceeds of the sterling loan made against the hypothecation of the rails mentioned in the sale note Ex. No. 11.

Q. Can you state how Vibbard, Foote & Co. came into possession as owners of this iron in the first instance?

A. I assume from the letter, Ex. No. 10, that upon payment by Vibbard of the 249 thousand to the credit of Bent, secretary, as appears in Ex. No. 10, the securities previously held, and which covered
792 a part or the whole of the iron mentioned in the sale note, were handed to them, the lien of the 40 thousand sterling loan being at the same time satisfied. This view is confirmed by reference to the currency account of Moorhead with Jay Cooke and Co., N. Y., annexed to the deposition of H. C. Fahenstock, in which I find credit under date April 17, V., F. & Co., $249,710\frac{25}{100}$; and on the 18th, which was the date on which the transactions of the 17th would be settled in money (it being the usage of the Stock Exchange to deliver gold on the day following the purchase), I find a further charge: April 18th, £40,000 sterling, $230,-$820\frac{33}{100}$.

Q. What do these reciprocal debits and credits indicate, according to the mode in which this business was done with Jay Cooke and Co. and Vibbard, Foote & Co.?

A. It indicates that they received for the credit of Mr. Moorhead from Vibbard, Foote & Co. something which represented the 249 thousand and odd, and that they charged Moorhead with sterling loan on that day.

Q. How was that connected with this iron?

A. The rails referred to were collateral for the £40,000 loan. They were the consideration for the credit of the $249 thousand dollars.

Q. Is there anything in these entries of debit and credit, or anything within your knowledge irrespective of those entries, which enables you to say whether or not the money paid by Vibbard, Foote & Co. for that iron was furnished them in any way or form by Jay Cooke and Co.?

793 A. That is entirely outside of my knowledge.

Q. Mr. French, can you state what was the proportion of the advance by Jay Cooke & Co. to Vibbard, Foote and Co. of the value of the iron?

A. I have no knowledge of it. On the sterling loans you will find by reference to the schedules the valuation or estimate of the merchandise pledged. This, my impression is, is about 20 per cent. in excess of the amount advanced.

Q. Mr. French, please give the details of the sterling loan to Vibbard, Foote & Co., under the agreement of April 9th, referred to in your direct examination; sterling loan of April 23d.

A. That is one of a series of transactions about which I have no more

specific knowledge than the documents give. That on such a date merchandise estimated at a given value was hypothecated as security for a loan of 55 days made in sterling, with the understanding, not however expressed in the contract, that if not reimbursed by that time the loan would be renewed on payment of charges and commission.

Q. How did you personally become acquainted with this understanding?

A. That was the purpose of the contract of April 9th, as will be seen by reference to it.

Q. Then your information is derived from those papers?

A. Yes. I did not make the bargain, but was charged with
794 carrying out the details of the loan; drawing out the bills and looking after papers which were in my custody, and the securities.

Q. Please state all that you know concerning this purchase by Williams, Deacon & Co. from the Navy Department, indicated in Ex. 1 of Jan'y 19, 1877, and referred to in your direct examination.

A. During the early fall of 1876 the Secretary of the Navy notified me verbally that the account must be liquidated by the first day of October then following. I thereupon cabled to Mr. McCulloch to come to this country, and he sailed on the 9th of September. Thereupon the securities were sold as fast as purchasers could be found, leaving still in his hands sundry items of the value, roughly, of $200,000. This estimate is not a close one, because a portion of the items were defaulted railway bonds, for which there is no regular market. Efforts were made in several directions to find purchasers without success, and, of course, the firm in London was communicated with. They applied to Williams, Deacon & Co., who had on a previous occasion, 3 years before, advanced a considerable amount to Jay Cooke, McCulloch & Co. against collaterals handed them in London, taking also an assignment of the collaterals held by the Secretary of the Navy subject to his lien. This loan, made during the fall of 1873, has not yet been paid. About the 20th of November, 1876, a cable dispatch was received offering $185,000, i. e.
795 £35,000, for the various collaterals then held by the Secretary, enumerating them. This was communicated to the Secretary and accepted by him from Washington on the 23d November. These various bills of sale for this iron and for other items were then made out, and the amount paid to the subtreasury by the First National Bank, which in turn was reimbursed by Williams, Deacon & Co., of London.

Q. Was this telegram from Williams, Deacon & Co. received in answer to any cablegram sent from this side?

A. The dispatch was received in cipher through Messrs. McCulloch & Co., the successors to Jay Cooke, McCulloch & Co. The subject of closing the account and the sale of the collaterals had been corresponded about and probably cabled about for some time previous between me and McCulloch and Co.

Q. Was this message from Williams, Deacon & Co. received in pursuance of any communication, telegraphic communication, made from this side to Cooke, McCulloch and Co.?

A. That I cannot answer. I thought I had the cables in my possession, but they were addressed by Mr. Evans, of Jay Cooke, McCulloch and Co., to Mr. McCulloch, so that they are not copied in my books. I had them all at the time of the transaction.

Q. What has become of them, Mr. French?

A. I carried them to Washington, and I think they can be found

either by Mr. McCulloch or myself. They are in the possession of either Mr. McCulloch or myself.

796 (Examination adjourned to February 2nd, 1877.)

E. D. COWMAN,
Notary Public.

Cross examination of Francis O. French continued, February 2d, 1877.

Q. Have you anything to add to the explanation of this transfer or this transaction with Williams, Deacon and Co., detailed in your examination of the 31st of January?

A. I find that a cable was sent to Jay Cooke, McCulloch and Co. on the 17th of November, asking for £35,000 to complete the settlement with the Navy account; that in response to this, on the 22d I think, Mr. McCulloch received a dispatch from Mr. Evans, of Jay Cooke, McCulloch & Co., referred to above, authorizing him to draw £35,000 sterling, and also saying that the amount was furnished by Williams, Deacon & Co. To this McCulloch enquired whether he should drawn on Williams, Deacon & Co. or on McCulloch & Co., the new firm, and was directed to draw on McCulloch and Co. He thereupon drew a draft, of which I now produce the third, for £35,000, drawn by Hugh McCulloch, individually, on McCulloch and Co., London, "as advised by cable," and across the face accepted by McCulloch and Co., in favor of the

797 First National Bank. Against this draft the First National Bank advanced $185,500, with which the settlement was made in part. Other collateral was sold here of about $14,000, and Jay Cooke, McCulloch and Co., paying the balance, about $22,000, and thus closing the account to a point. I understand the transfer to Williams, Deacon and Co. to be an absolute sale, as against the world, and that, however, on final settlement between Williams, Deacon & Co. and Jay Cooke, McCulloch & Co., the profit, if any, be applied; that as a matter of legal right the profits, if any, belong to Williams, Deacon & Co. I am also under the impression if a purchaser for the whole amount of collateral could be found to-day at the prices which we regard they are intrinsically worth, which would show a very large profit over and above the purchase money, that Williams, Deacon and Co. would undoubtedly, in making a final settlement with Jay Cooke, McCulloch & Co., give them the benefit of such profits; but this is a matter of generosity or grace; and that if the personal relations of the parties should change, so that an adjustment is made in accordance with their legal rights, that Jay Cooke, McCulloch and Co. could not claim any profit growing out of the transfer of the securities from the Secretary of the Navy.

Q. What are the personal relations just referred to?

A. They are extremely friendly.

Q. Upon what is the impression based mentioned in your answer just preceeding the last?

798 A. It is based upon letters which I received from Williams, Deacon & Co. in reply to my report to them of the transfer of the securities, which letter I have endeavored to produce at this examination, and which I had yesterday, and which possibly I may find in season for you; and also upon a telegram received yesterday from Mr. McCulloch, in response to a letter from me written after the close of the examination on the 31st, to enable me to answer more fully in regard to this transaction.

Q. Will you produce the letters hereafter?

A. Yes, sir; I will produce them.

Q. From what source of information did you derive the understanding, which you have stated, that the sale of these securities to Williams, Deacon & Co. was an absolute sale as against all the world?

A. I have only to refer to my previous answer.

Q. You have no information beyond that you detailed in your previous answer?

A. That is all, sir.

Q. The arrangement, as I understand, it was made in Europe?

A. Yes, sir; I have no personal knowledge of the transaction in Europe.

Q. When was this arrangement made?

A. Some time between the 17th of November and the 22d.

Q. That was '76?

A. '76—last November.

799 Q. Where was Mr. McCulloch at that time?

A. He was in New York City; that is, he was at Plainfield; was in New York every day.

Q. The arrangement was made then after he left the other side?

A. Yes, sir; he left on or about the 9th September.

Q. What personal knowledge have you as to the reimbursement to the First National Bank of the money received from them as the avails—the proceeds—of this draft for £35,000?

A. The draft was paid, and Williams, Deacon & Co. mentioned in their letter having paid the amount.

Q. Then the only information you have is that conveyed by that letter?

A. Yes, sir.

Q. Where was the account between the Navy Department and Cooke, McCulloch and Co. kept?

A. It was kept in Washington by the government and in London by the London firm.

Q. How came the price of the 1,069 tons mentioned in Exhibit 1 of January 19', '77, being the receipt from George M. Robeson, Secretary of the Navy, to be fixed at $20 per ton?

A. Because I regarded that as the price we could get if it were exported to Canada.

Q. By whom was the price so fixed at $20 per ton?

A. Fixed by the Secretary of the Navy, on my suggestion that that was the fair market value.

800 Q. In pursuance of what directions or authority did you assent to that price?

An estimate had been made of all the securities, this among the other, held by the Secretary. The price was actually fixed by the Secretary at my suggestion, as I regarded that as the value of the iron at the time.

Q. From whom did you derive the instructions upon which you acted in consummating this transaction?

A. Mr. McCulloch was present in New York before I went over to Washington, and I was then in possession of the telegram referred to.

Q. Your authority then, as I understand, was derived from Mr. McCulloch and that telegram?

A. Yes, sir.

The telegram being the telegram from Mr. Evans to Mr. McCulloch?

A. Yes, sir.

Redirect by Mr. HUBBARD:

Q. I understand you to say that that amount of $185,500 was not enough to pay the balance due the Navy Department?

A. No; it was not. Mr. McCulloch, representing Jay Cooke, McCulloch and Co. in liquidation, had to provide the balance to pay off the Navy account. He provided something over $22,000 or $23,000.

Q. Who composed the firm of McCulloch and Co. in November?

801 A. Hugh McCulloch, Francis H. Evans, both of whom were members of the firm of Jay Cooke, McCulloch and Co., and the Hon. Ronald Leslie Melville, who was not a member of the firm of Jay Cooke, McCulloch & Co.

Q. You spoke of McCulloch and Co. as successors of Jay Cooke, McCulloch & Co.; will you say what you mean by successors?

A. The firm of Jay Cooke, McCulloch and Co. was terminated by the decree in bankruptcy of several of their American partners, on or about the 25th November, 1873. A new firm was immediately made up, called McCulloch and Co., consisting of Hugh McCulloch, John H. Puleston, and F. H. Evans. All three had been members of the firm of Jay Cooke, McCulloch and Co. At a later period, without change of style, Mr. Melville, above named, came into the firm, I think during December, 1873. In July or August, 1876, Mr. Puleston retired from the firm, without change of style, and in January, 1877, Mr. Thomas Fickus was admitted, without change of style.

Q. When you say successors do you mean that the firm of McCulloch & Co. have or had any interest in the business of Jay Cooke, McCulloch & Co.?

A. I did not mean that they had any interest in or liability for the business of Jay Cooke, McCulloch & Co. I mean merely that they occupied the same offices and continue to deal, so far as they can, with the same people as the old firm did.

802 Q. Is that firm of McCulloch and Co. liquidating the business of Jay Cooke, McCulloch and Co., or is that liquidation attended to by some members of the firm?

A. The firm of McCulloch and Co. has nothing to do with the liquidation of the old firm. It has been under the conduct of Mr. McCulloch and Mr. Evans principally.

Q. You spoke in one part of your examination of a credit being made to the account of Bent, secretary. Do you know that any account was kept with Bent as secretary?

A. I followed the phraseology of the letter Exhibit . I don't remember what the style of that account was, whether it was Moorehead, construction agent, or Bent; but reference to exhibit attached to Fahenstock's deposition shows that the account was kept in the name of Moorhead, construction agent.

Q. You spoke of an assignment or pledge having been made to Williams, Deacon & Co. in the fall of 1873 of the collaterals then pledged to the Secretary of the Navy, subject to his rights. Say as nearly as you can when that pledge was made to Williams, Deacon & Co.

A. My impression is that it was made during September or October, 1873.

Q. Can you say whether it was made before or after the claim

803 was made by the Amsterdam parties, or their representatives, for the iron that is in litigation?

A. I can learn the exact date and will furnish it.

Examination adjourned to Feb. 5, 1877.

E. D. COWMAN,
Notary Public.

Cross-examination of Francis O. French continued Feb. 5th, 1877.

By Mr. SCOTT:

Q. Please state the total amount payed to the Secretary of the Navy and the particular sources from which the amounts were realized making up that aggregate.

A. They are shown in the letter of the Secretary dated November 23d, a copy of which is annexed hereto, and the $185,500 is the amount obtained from the First National Bank as already stated. The $14,500 were the proceeds of rails at New Orleans, not connected with the Moorhead transaction, and the $21,408.13 was raised by Mr. McCulloch as already stated.

Q. Have you found and will you produce the dispatch to Cooke, McCulloch & Co., and the answer thereto, referred to in your cross-examination, and also the bill of exchange for £35,000.

A. I have obtained copies of the dispatches, and present herewith the bill of exchange. The first one, under date November 17, is in cipher, and the following is the translation: Addressed, "Jay Cooke,
804 McCulloch & Co., London. The account with the Navy can be settled for £43,000 sterling. Can you raise £35,000 in London on the following securities: $479,000 Indianapolis, Decatur & Springfield R. R. Co. 7% income bonds; $145,000 of the St. Joseph and Denver, western division, now under foreclosure, the balance of the claim of Jay Cooke, McCulloch & Co. against Jay Cooke and Co., and my real estate, estimated at $100,000, gold? Immediate action must be taken to prevent sacrifice. (Signed) Hugh McCulloch." To this the following reply was received in cipher, of which the following is a true translation: "November 20, 1876. Hugh McCulloch: You can draw on us for £35,000, conditioned on receipt in full from Navy Department, and on transfer of the $300,000 Northern Pacific preferred, and delivery of the 624 bonds, and on letter from you pledging yourself to assign your real estate, and on assignment of balance of the Cooke claim, all to F. O. French, in trust; the Secretary giving up or cancelling the letter he holds from you in reference to real estate. (Signed) Francis H. Evans."

Q. Did Mr. McCulloch write the letter referred to pledging the real estate?

Yes, sir. It is referred to in a letter from me to Williams, Deacon & Co., dated November 24. The bill of exchange is in the words and figures as follows: "Exchange for £35,000 sterling. New York,
805 November 22d, 1876. On demand of this third exchange, first and second unpaid, pay to the order of George F. Baker, cashier, in London, £35,000 sterling, value received, and charge the same to account as advised by cable this day. (Signed) Hugh McCulloch." Addressed to Messrs. McCulloch & Co., London, England. Across the face the words "accepted," signed "McCulloch and Co.;" endorsed, "Pay to the order of McCulloch and Co., for the First National Bank of the city of New York, George F. Baker, cashier." Bank number 98615.

Q. Will you produce a copy of that letter of November 24, to Williams, Deacon & Co.?

A. Yes, sir. (Produced and read.)

"NOVEMBER 24th, 1876.

Messrs. WILLIAMS, DEACON AND CO., *London, England:*

"DEAR SIRS: On receipt of Mr. F. H. Evans' cable dispatch authorizing Mr. McCulloch to draw for £35,000, conditional upon the transfer of certain collaterals named and the settlement of the account of Jay Cooke, McCulloch and Co. with the Navy Department, I went to Washington yesterday and made payment to the Secretary of the Navy of the amount standing to the debit of Jay Cooke, McCulloch and Co., as per copy of the Secretary's letter of the 22d inst., enclosed herein. You will note that for the equivalent of £35,000 sterling at 5.30, say $185,500 currency, I took bills of sale for the collateral turned over to you as follows: $145,000 St. Joseph and Denver City R. R., western division, bonds, at

	15%	21,750	00
806	$47,900 Indianapolis, Decatur and Springfield R. R. bonds at 15%	71,850	00
	All the interest of the Navy Department in tons 1069-12-2-24 iron rails at Duluth, in litigation	21,392	70
	$301,500 preferred stock of the Northern Pacific R. R. Co., at 10	30,150	00
	Sundry claims of Jay Cooke, McCulloch & Co. on Jay Cooke & Co., held by the Secretary	40,357	30
		185,500	00

"The 479,000 Indianapolis, D. & C. R'w'y bonds as per list herewith were delivered to me. I also received a receipt of the Farmers' Loan and Trust Company this day, with whom the St. Joseph & Denver bonds are deposited for purposes of foreclosure. The $301,500 Northern Pacific preferred stock was delivered to me in certificates, as per list herewith. The formal assignment of the claims on Jay Cooke and Co. was also delivered to me, and will be forwarded to-day for record to the register in bankruptcy at Philadelphia. Mr. McCulloch has also handed me an agreement to assign his real estate, of which a copy is enclosed herewith." (The remainder of the letter does not relate to the matters in litigation, and is omitted by consent of counsel.)

"Very respectfully,

"F. O. FRENCH."

The letter from the Secretary of the Navy referred to is as follows:

"NAVY DEPARTMENT,
"*Washington, Nov. 23d,* 1876.

"F. O. FRENCH, Esq.:

"SIR: I am advised by the Fourth Auditor, by letter of this date, that

	the balance against Jay Cooke, McCulloch & Co., as per settle-		
807	ment made yesterday, is in dollars	221,236	07
	Add 7 days' interest for collection of check	172	06
		221,408	13
	I have received from Jay Cook, McCulloch & Co. 21,408 12		
	Proceeds of collaterals 186,500		
	Sold with their assent—		
	" "		
	" " 14,500	221,408	13

"Thus balancing the account.

"Very respectfully,

(Signed) "GEORGE M. ROBESON,
"*Secretary of the Navy.*"

By Mr. HUBBARD:

Q. Williams, Deacon & Co. afterwards wrote you accepting that transaction, did they not?

A. Yes; they did.

Q. And the letter shown you is from them, is it not?

A. The letter dated 11th December is from them. (The letter is produced and a copy is annexed hereto.)

Q. This letter refers to a letter from Williams, Deacon and Co. to yourself of the 7th instant. Have you tried to find that?

A. Yes, sir. I have looked for that letter and can't find it.

By Mr. SCOTT:

Q. These bonds of the St. Joseph & Denver City R. R. Co. were first-mortgage bonds?

A. Yes, sir; on the western division.

Q. Were the Indianapolis, Decatur and Springfield R. R. bonds first mortgage bonds?

808 A. In form they are second-mortgage bonds.

Q. How are they in fact?

A. I think a few first-mortgage bonds have been issued. There is a provision in the mortgage by which a prior lien can be created. My impression is that a few bonds under that provision have been issued for the purpose of extending the road towards Indianapolis, which is the purpose for which the new lien is authorized to be created.

F. O. FRENCH.

Sworn before me, 5th February, 1877.

{ E. D. COWMAN' S NOTARIAL SEAL, N. Y. CO. }

E. D. COWMAN,
Notary Public, N. Y. Co.

Copy of letter referred to page 69.

[COWMAN'S SEAL.] E. D. COWMAN.

20 BIRCHIN LANE, LONDON, 11 *December*, 1876.

F. O. FRENCH, Esq., 94 *Broadway, New York:*

DEAR SIR: We have the pleasure to confirm our letter to you of the 7th inst., in which we accepted and thanked you for the arrangements made on our behalf as explained in your letter of the 24th November, and its enclosures. We now beg to enclose a note of inquiries on some matters of detail, to which, at your convenience, we should be glad of replies. We are, dear sir, yours faithfully,

WILLIAMS, DEACON AND CO.

809 Copy Exhibit 1, of January 11, 1877.

E. D. COWMAN.

[Jay Cooke & Co., New York, Philadelphia, Washington. Jay Cooke, McCulloch & Co., London.]

NO. 20, WALL STREET,
New York, April 9, 1873.

In consideration of amounts of sterling now loaned and to be loaned me by Jay Cooke and Co., of New York, I hereby agree to provide them with sufficient and satisfactory funds to meet the payment of all loans, according to the terms thereof, either in cash at their drawing rate, or in bank bills, payable at not exceeding sixty days' sight, in London, endorsed by me and approved by them, it being understood that they may

decline any bills, however good, at their discretion. I also agree to give security for the same at any time if required by said Jay Cooke & Co., and further that all property designated in the schedule herewith, and the proceeds thereof, are hereby pledged and hypothecated to Jay Cooke & Co., and Jay Cooke, McCulloch & Co., as collateral security for the fulfillment of this contract, and are held subject to their order, with authority to take possession and dispose of the same at discretion for account of whom it may concern, charging all expenses, including
810 commission for sale and guarantee, and applying the proceeds for their security or reimbursement. And I further pledge, as security for any other indebtedness of our firm to Jay Cooke & Co., or Jay Cooke, McCulloch & Co., any surplus that may remain either in the property or in the proceeds thereof after providing for such loans.

This obligation is to continue in force notwithstanding any changes in the individuals composing either of the firms parties to this contract, or in that of the user of this credit.

This agreement without prejudice to prior liens of Jay Cooke and Co., or Jay Cooke, McCulloch and Co., either or both of them, and to apply to all renewals as as well, until same shall be fully liquidated, with charges.

(Signed)

EMERSON FOOTE.

CITY & COUNTY OF NEW YORK, *ss:*

I hereby certify that the within is a true and correct copy of the original agreement referred to in the annexed deposition of Francis O. French as Ex. No. 1, January 11, 1877, and of the whole and every part of such original.

{ E. D. COWMAN'S NOTARIAL SEAL, N. Y. CO. } Witness my hand and seal of office, at the city of New York, Jan'y 11, 1877.

E. D. COWMAN,
Notary Public, N. Y. Co.

811 Copy Exhibit 2, of Jan'y 11th, 1877.
[SEAL.]

E. D. COWMAN.

Loans and renewals.

LOANS.		RENEWALS.	
Ap'l. 9	£100,000	July 28	£ 100,000
" 23	125,000	June 15	125,000
June 15	125,000	Aug. 9	125,000
July 28	100,000	Sept. 13	100,000
Aug. 9	125,000	"	125,000
Sept. 4	20,000		
"	20,000		
"	20,000		
"	20,000		
Sept. 13	60,000		
"	60,000		
"	60,000		
"	55,000		
	890,000		575,000
Balance			314,000
	890,000		890,000
Balance	£315,000		

CITY & COUNTY OF NEW YORK, *ss:*

I hereby certify that the foregoing is a true and correct copy of the original memorandum referred to in the annexed deposition of Francis O. French as Ex. 2, of January 11, 1877, of the whole and every part of such original. Witness my hand and seal of office, at the city of New York, January 11, 1877.

{ E. D. COWMAN'S NOTARIAL SEAL, N. Y. CO. }

E. D. COWMAN,
Notary Public, N. Y. Co.

812 Copy Exhibit 3, of Jan'y 11, '77.

E. D. COWMAN.

New Rails.—The W. G. Moorhead lots.

935	6	1	8	Kate Crosby.....	At Erie basin.....	Cost $60 00 c'cy.	Value $70, gold.
800	14	2	8	Rebus.....	" " "		
832	16	1	5	Omax.....	Commercial wharves.....		
670	4	2	9	Excelsior.....	Commercial w'f.....	Cost $55 c'cy	
830	3	1	3	Able.....	" " "		
1,400	9	1	8	Lillie Soulard.....	Schenck's stores.....		
825	2	0	0	Presto.....	At Buffalo & Duluth.....	Cost $55 c'cy.	
500	2	1	11	Familius Minde...			
1,167	12	2	17	Nancy M.....			
1,249	18	2	16	W. T. Hatfield....	At Commercial wharves...	Cost $55 c'cy.	
797	8	0	10	Blue Jacket.....	Schenck's stores.....		
10,009	18	0	21		@$70 gold=	$700,700 00.	

CITY AND COUNTY OF NEW YORK, *ss:*

I hereby certify that the within is a true and correct copy of the original statement referred to in the annexed deposition of Frances O. French as Exhibit 3, of January 11, 1877-'8, of the whole and every part of such original.

Witness my hand and seal of office, at the city of New York, January 11, 1877.

[SEAL.]

E. D. COWMAN,
Notary Public, N. Y. Co.

813 Exhibit 4, of Jan'y 11, '77.
[E. D. C. SEAL.]

E. D. COWMAN.

Memorandum of cargoes of rails.

	2,927 bars—2,969 bars.	Ex. Nancy M.	Ex. Presto.	Ex. Fam. Minde.	Total.
At Duluth.		589, 12, 3, 9.	280, 0, 0, 24. 1, 422 bars.	199, 19, 2, 19. 1, 015 bars.	1, 069, 12, 2, 24.
At Buffalo.		577, 19, 3, 8.	.....	.....	577, 19, 3, 8.
		"	545, 1, 3, 4.	300, 2, 2, 20.	845, 4, 1, 24.
		1, 167, 12, 2, 17	825, 2, 0, 0.	500, 2, 1, 11.	2, 492, 7, 0, 0.

Sold Russel' & Moulton..... 845, 4, 1, 24
" for export Buffalo..... 577, 19, 3, 8
" " " Duluth } 1,069, 12, 2, 24
And stopped by litigation } 2, 492, 17, 0, 0

814 Cert'd copy, Ex. A, January 10, '77, for identification. Ex. 1, of January 12, '77.

[SEAL.]

E. D. COWMAN.

Memorandum of securities.

Notes of the Indiana and Illinois Central R. R. Co.:

3	notes	due	June	3d,	gold	$86,659 46
1	"	"	"	8	"	60,004 79
2	"	"	"	18	"	38,055 38
1	"	"	"	21	"	24,443 61
1	"	"	July	7	"	51,545 32
1	"	"	Sept.	20	"	29,097 23

Gold $289,805 79

Secured by 416 bonds of $1,000 each, gold, 1st mortgage, 7 %.
10 bonds of $1,000 each, 7 % mortgage of the Boston, Clinton & Fitchburg R. R. Co.
145 bonds 8 %, 1st mortgage of the St. Jo Denver City R. R. Co. land grant, of $1,000 each.

2,245	tons Darlington rails at New Orleans.	Bonded.
902	" " " "	Free.
577-19-3-8	" railroad iron in bond at Buffalo.	
1,069-12-2-24	" " " " " Duluth.	
608-12-2-18	" " " " " " New York,	Thos. Durham.
361—1-0—0	" " " " " " "	De Capo.
1,330—0-2-18	" " " " " " "	Lillie Lorillard.
750—0-2-19	" " " " " " "	Atlas.
Page 2, E. D. C. 553-15-1—9	" " " " " "	New Orleans, per Valkyrien.
815 605-1—2-19	tons railroad iron in bond at New Orleans, per Gusto Helvetia.	
654-10-0—0	" " " " " "	" per Kallisto.
593-19-1-10	" " " " " "	" Constantine.
545—1-3—4	" " " " " "	" Buffalo, per Presto.
300—2-2-20	" " " " " " "	" " F. Minde.

The securities and property in the foregoing list are transferred, assigned, set over, granted, sold, and delivered to George F. Cutter, pay-director of the United States Navy, to be held by him, subject to the orders of the Secretary of the Navy, for the use and benefit of the United State Government, for the purpose of securing and protecting the foreign account of the Navy Department of said government with the house of Jay Cook', McCulloch & Co., of London, England, and for reimbursing said government for any loss thereon. The same to be in all things subject to the direction, use, and disposal of the said government for the purposes aforesaid, in any manner, by sale, pledge, transfer, or other manner of disposal, use, or liquidation, at the discretion of the proper officers of said government.

Dated New York, Sept. 25.

pp. JAY COOKE, McCULLOCH & CO.
F. O. FRENCH.

In consideration of the above transfer the last four items on the preceding page are withdrawn.

GEO. F. CUTTER,
Pay-Director, U. S. N.

816 Page 3. E. D. C. The securities and property in the annexed list are transferred, assigned, set over, granted, sold, and delivered to George F. Cutter, pay-director of the United States Navy, to be held by him, subject to the orders of the Secretary of the Navy, for the use and benefit of the United States Government, for the purpose of securing and protecting the foreign account of the Navy Department of said government with the house of Jay Cooke, McCulloch & Co., of London, England, and of reimbursing said government for any loss thereon. The same to be in all things subject to the direction, use, and disposal of the said government for the purposes aforesaid, in any manner, by sale, pledge, transfer, or other manner of disposal, use, or liquidation, at the discretion of the proper officers of said government.

Dated New York, Sept. 22, 1873.

(Signed) JAY COOKE, McCULLOCH AND CO.

CITY AND COUNTY OF NEW YORK, *ss:*

I hereby certify that I have compared the foregoing with the original memorandum and agreement, referred to in the annexed deposition of Francis O. French as Ex. A., Jan. 10, '77, for identification, and as Ex. 1, of Jan. 12, '77, and that the same is a true and correct copy of said original and of the whole and every part thereof, the original paging being indicated in the margin of the said copy.

Witness my hand and seal of office, at the city of New York, January 12, 1877.

{ E. D. COWMAN'S NOTARIAL SEAL, N. Y. CO. }

E. D. COWMAN,
Notary Public, N. Y. Co.

817 *Copy Ex.* 1, *Jan.* 19, '77.

WASHINGTON, 23 *Nov.*, 1876.

Messrs. Williams, Deacon & Co., London, to United States Navy Dep't, dr.

1876.

Nov. 23. To 1,069 tons, 12 cwt., 29, 24 lbs., iron rails at Duluth, subject to litigation, @ $20 per ton, in bond.... $21,392 70

Rec'd payment.

GEORGE M. ROBESON,
Sec. of Navy.

CITY & COUNTY OF NEW YORK, *ss:*

I hereby certify that the within is a true and correct copy of the original bill of sale referred to in the annexed deposition of Francis O. French as Exhibit No. 1, January 19, 1877, and of the whole and every part of such original.

Witness my hand and seal of office, at the city of New York, January 19th, 1877.

[E. D. C.'S NOT. SEAL, N. Y. CO.]

E. D. COWMAN,
Notary Public, N. Y. Co.

Ex. 2, Jan'y 19, 1877.

E. D. COWMAN. [SEAL.]

TREASURY DEPARTMENT,
Washington, D. C., October 12th, 1872.

SIR: In reply to your letter of the 10th instant, I have to inform you that instructions have this day been issued to the collector of customs

at New York disposing of your application made in behalf of Wm. G. Moorhead for permission to make withdrawal at Buffalo of a portion of certain railroad iron shipped in bond for Duluth.

818 You are respectfully referred to that officer for all needed particulars.

I am, very respectfully,

I. P. HARTLEY,
Ass't Secretary.

Mr. F. O. FRENCH,
(Care of Jay Cooke & Co.) *New York.*

Ex. 3 of Jan'y 19, '77.

E. D. COWMAN. [COWMAN'S NOT. SEAL.]

Statement of St. Paul & Pacific R. R. Cos. iron on dock., ex. ship Presto.

B. L.	℔175.	Boat	T. McCollum,	380	bars.....	168,000 ℔
	185.	"	Ed. Dickson,	505	"	224,000
	191.	"	R. J. Wylie,	504	"	224,000
	194.	"	D. T. Martin,	504	"	224,000
	196.	"	Maggie Elliott,	402	"	179,200
	203.	"	W. H. Mead,	475	"	201,824
Total No. on dock at Buffalo..				2,770	"	1,221,024 ℔

Lengths, 2,512=rails 24 ft.
111= " 22 "
91= " 20 "
56= " 18 "

Total, 2,770 rails.

H. C. FRENCH, *Ag't.*
J. M. C.

BUFFALO, *Oct. 19th*, '72.

Original entries cancelled and new entries made. One as per this statement for Buffalo & one for balance of original cargo for Duluth. Mail entries will be forwarded to-day, Oct. 25, '72.

J. KENT BOYD.

819 Ex. 4 of Jan'y 19, '77.

E. D. COWMAN. [E. D. C.'S SEAL.]

Statement of St. Paul and Pacific R. R. iron on docks, ex. ship F. Minde

B. L.	℔ 172.	Boat	Ella Ward,	511	bars.....	224,000 ℔
	182.	"	Allen Monroe,	509	"	224,000
	198.	"	A. C. Carpenter,	282	"	123,200
	203.	"	W. H. Mead,	231	"	101,063
Total No. bars on dock at Buffalo,				1,533	"	672,263 ℔

Lengths:
1,377 rails 24 ft. long.
100 " 24 " "
46 " 20 " "
10 " 18 " "

H. C. FRENCH, *Ag't,*
J. M. C.

Total, 1,533 rails.

Buffalo, Oct. 19th, 1872.

(In pencil on original:)

2,548	to Buffalo	.....	1,120,200
1,533		.....	672,263
1,015			447,937

Original entries cancelled and new entries made, one as per this statement for Buffalo & one for balance of original cargo for Duluth.
Mail entries will be forwarded to-day, Oct. 25, '72.

J. KENT BOYD.

820 Ex. 5, of Jan'y 19, 1877.

E. D. COWMAN. { E. D. COWMAN'S NOTARIAL SEAL, N. Y. CO. }

Statement of St. Paul and Pacific R. R. iron on dock, ex. ship Nancy M.

B. L. #	139.	Boat	F. A. Gage,	490	bars	224,000
	147.	"	Harry Robe,	504	"	224,000
	149.	"	H. C. Robe,	500	"	224,000
	153.	"	J. M. Baker,	503	"	224,000
	155.	"	A. C. Wickes	504	"	224,000
	159	"	H. C. Williams,	426	"	174,720
Total No. bars on dock at Buffalo,				2,927	"	1,294,720#

Lengths:

2,412 rails 24 f't long.
411 " 22 " "
83 " 20 " "
21 " 18 " "

2,927 rails.

H. C. FRENCH, *Ag't*,
J. M. C.

Buffalo, Oct. 19, '72.

Original entries cancelled and new entries made, one as per this statement for Buffalo and one for balance of original cargo for Duluth.
Mail entries will be forwarded this day.
Oct. 25, '72.

J. KENT BOYD.

821 State of Minnesota, district court, county of Ramsey.

JESSE P. FARLEY, RECEIVER, ETC., *against* CHARLES A. DE GRAFF AND OTHERS.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

I, Edward D. Cowman, a notary public of the State of New York, in and for the city and county of New York, do hereby certify that the deposition of William G. Moorhead, hereto annexed, was taken before me, at the law office of Messrs. Butler, Stillman and Hubbard, Trinity building, No. 111 Broadway, New York City, by and pursuant to the authority given in and by the annexed stipulation, subscribed by the

solicitors of the plaintiff and defendants Russell and Lewis, respectively, and bearing date December 18th, 1876, and of a further stipulation made between William H. Scott, acting on behalf of said plaintiff, and Thomas H. Hubbard, esq., acting on behalf of said defendants Russell and Lewis, dated N. Y., January 19, 1877, and also hereto annexed; that the said witness before examination was duly sworn by me to testify
822 the truth, the whole truth, and nothing but the truth relative to the cause specified in said stipulations, and that the testimony so taken, having been written out, was by said witness read over, and then subscribed in my presence, and duly sworn to be true by said witness.

In witness whereof I have hereto set my hand and affixed my official seal, this sixth day of February, A. D. 1877.

{ EDWARD D. COW'AN'S NOTARIAL SEAL, N. Y. CO. }

E. D. COWMAN,
Notary Public, N. Y. Co.

STATE OF MINNESOTA:

Circuit court of the United States for the district of Minnesota.

JESSE P. FARLEY, RECEIVER OF THE ST. PAUL and Pacific Railroad Company,
vs.
CHARLES A. DE GRAFF, B. S. RUSSELL, ET AL.

It is stipulated that the deposition of Hugh McCullough, esq., and such other persons as the defendants or either of them may desire
823 to examine, may be taken, without other or further notice, at the law office of Messrs. Butler, Stillman and Hubbard, Trinity building, No. 111 Broadway, New York City, before any notary public, at any time during the month of December, 1876, or by January 10, 1877, to be certified and forwarded by said notary to the clerk of said court, at Saint Paul, and used in evidence so far as the same may be relevant, provided that notice of five days be given Scott and Crowell, 33 Wall st., N. Y. City, who shall have the right to cross-examine on behalf of complainant.

St. Paul, December 18th, 1876.

JAMES SMITH, JR.,
Sol. for Def't Russell, also for E. M. Lewis.
I. V. D. HEARD,
Sol. f'r Pl'ff.

State of Minnesota, district court, county of Ramsey.

JESSE P. FARLEY, RECEIVER, ETC.,
against
CHARLES H. DE GRAFF AND OTHERS.

Messrs. SCOTT and CROWELL:

GENTLEMEN: In accordance with the stipulation made in Min-
824 nesota, of which the defendant's attorneys advise us, we propose to take the depositions of Hugh McCulloch, Harris C. Fahenstock, Francis O. French, Edward Page, John G. Sibbald, and John H. Freeman, or one of the three last named, at our office, on Friday, Jan-

uary 5th, at 2 o'clock p. m., and send you this as the five days' notice required.

Very truly, yours,

BUTLER, STILLMAN AND HUBBARD.

Examination adjourned to January 9th, 10.30 a. m.

W. H. SCOTT.

We consent that the depositions of the witnesses named in the foregoing notice, and also that of William G. Moorhead, have the same effect as if commenced and concluded on or before January 10, 1877; and also consent that copies of the various exhibits referred to in said depositions may be certified as correct copies by Edward D. Cowman, notary public, and annexed to and returned with said depositions in place of the originals.

WM. H. SCOTT.
THOMAS H. HUBBARD.

(Endorsed:) State of Minnesota, district court, county of
825 Ramsey. Jesse P. Farley, receiver, &c., against Charles H. De Graff and others. Notice. Butler, Stillman and Hubbard.
Due service of a copy of the within is hereby admitted.
N. Y., Dec. 30th, 1876.

CHAPMAN, SCOTT AND CROWELL.

State of Minnesota, district court, county of Ramsey.

JESSE P. FARLEY, RECEIVER OF THE ST. PAUL and Pacific Railroad,
vs.
CHARLES A. DE GRAFF, WILLIAM CROOKS, and Nicholas De Graff, partners as De Graff and Co., The Northern Pacific Railroad Co., The Lake Superior and Mississippi Railroad Co., B. S. Russell, G. W. Cass, receiver, et al.

WILLIAM G. MOORHEAD appearing, and being duly sworn and examined in pursuance of the annexed stipulation, says as follows:

826 Direct examination by Mr. HUBBARD:

Q. Were you a trustee named in the mortgage made by the St. Paul and Pacific R. R. Co. on the first of April, 1871, to secure an issue of fifteen millions dollars of bonds by the First Division of the St. Paul and Pacific R. R. Co.?

A. Yes, sir; one of the three.

Q. And the others were Geo. L. Becker and Horace Thompson?

A. Yes, sir.

Q. At that time were you also a member of the firm of Jay Cooke and Co.?

A. Yes, sir.

Q. What interest did you have then or have you ever had in either of these railroads?

A. Not a dollar, sir.

Q. Either as stockholder or in any other way?

A. No, sir; not in any form whatever.

Q. What interest, so far as you know, did your firm have in either of those railroads?

A. None whatever. Never owned a bond or a dollar of stock.

Q. Had your firm any interest in the construction of the extension lines so called?

A. No, sir; not any.

Q. You made a contract, dated 12 May, 1871, with George L. Becker, as president of the First Division Co., for the construction of the
827 extension lines, did you not?

A. There was such a contract made.

Q. What interest, if any, did your firm have in the transactions that that contract related to?

A. They had not any, sir.

Q. Why did you make that contract?

(Objected to as incompetent.)

A. At the solicitation of the agent of the bondholders in Europe, Leon Willmar, whom I understood at the time to be their agent, and who so stated to me. In so stating, he said the Dutch, who would furnish the money, were very peculiar people. That if there was an i not dotted or a t not crossed they would find objections to the arrangement which he had made with the Northern Pacific R. R. Co., and for that reason desired some one to make a contract. It did not matter who it was.

(Objected to on several grounds: First, that there is no competent evidence of Mr. Willmar's agency; secondly, that even if there were, Mr. Willmar had no authority to make any arrangement binding the trustees under the mortgage; and, thirdly, that a large part of the answer purports to give he'resay testimony.)

Q. You had met Willmar before this contract was made?

A. In London I first met him.

828 Q. And you met him in New York City before the contract was made. Do you know whether he was representing anybody when he came to New York?

(Objected to, that the authority cannot be proved in this way.)

A. He came as representing Lippman, Rosenthal and Co., bankers in Amsterdam, and who had placed all the bonds of the company previously.

Q. After you had made this contract with Becker, was there an agreement between you and him or between you and any of the parties interested in the roads as to whether you were to have any profit from the contract?

A. There was nothing said; no arrangement whatever about the profits, but it was understood by all the parties connected with that road as well as the Northern Pacific that I was simply to act as agent in facilitating the building of the extensions.

(Last part of the answer objected to as incompetent, about referring to the understanding.)

Q. How do you know that there was such an understanding?

A. Members of the Northern Pacific R. R. Co. were present, Gov. Smith, Judge Rice, General Cass, and other members of the board, of
829 which fact I have so testified, I think, before some of the courts.

(Objected to as incompetent.)

Q. Who wrote out this contract of May 12?

A. Mr. Becker wrote it out.

Q. At whose request did he write it out?

A. That I don't know. Not at mine, and I never had a copy of the contract to this day, and I don't know that I ever read it. I don't know that I ever saw it after I signed it.

Q. There was a previous memorandum in pursuance of which this contract was made?

A. Yes, sir; there was.

Q. That was a memorandum between what parties?

A. That was done by Mr. Willmar. I am not sure whether he wrote it or dictated it.

Q. Who signed it?

A. I signed it.

Q. Anybody else?

A. No, sir.

Q. What became of it; where is it?

A. I never saw it afterwards.

Q. Mr. Willmar is dead now?

A. Yes, sir; he is dead.

Q. You say you were acting as agent. For whom were you agent?

(Objected to as incompetent.)

A. In a double capacity, with the St. Paul and the Northern Pacific.

830 Q. When you say the St. Paul and Pacific do you mean the First Division Company or the other company?

A. First Division.

Q. Now, were the fifteen millions of bonds referred to in the mortgage of April 1st, 1871, delivered to you?

A. They were delivered to me.

Q. Who delivered them to you?

A. George L. Becker.

Q. All at one time?

A. No, sir; in instalments.

Q. Did he give you any directions about them when he delivered them?

A. To forward them to Europe to the proper parties.

Q. When he delivered them was there a trustees' certificate, signed by either of the trustees?

A. Yes, sir; by both.

Q. By whom?

A. By George L. Becker and Horace Thompson.

Q. And what did you do with the bonds while they were in your possession?

A. I also signed, as trustee, the certificate which was upon the bonds, and then forwarded them to Lippman, Rosenthal and Co., or their agent; I am not sure which.

Q. Did you have anything to do with the sale of the bonds?

A. Nothing whatever.

831 Q. When you forwarded them to Lippman, Rosenthal and Co., did you give them any directions about the use of their proceeds?

(Objected to; it ought to be proved by the letter certifying the transmission of the bonds. And question withdrawn.)

Q. Did you forward all the bonds to Lippman, Rosenthal and Co.?

A. Except 30.

Q. Where are those?

A. Those are in Philadelphia, in fire-proof.

Q. Why were they not forwarded?

A. Mr. Becker had written me that he and Mr. Thompson had been trustees of other bonds as well as these, and had not received any compensation, and desired me to arrange to pay them a reasonable amount. For which purpose I retained those bonds, to be subject to the parties abroad.

Q. Did you receive that letter signed by Lippman, Rosenthal and Co., dated Amsterdam, May 19th, 1871?

A. Yes, sir. I had this letter in my possession. (Letter put in evidence, marked Exhibit 1, and is hereto attached.)

Q. When did you receive it and from whom?

A. From Mr. Becker.

Q. You say you received the letter of May 19th, 1871?

A. Yes, sir.

832 Q. And you also received a letter signed L. Willmar, dated London, 27 January, 1872?

A. Yes, sir.

(Letter put in evidence, marked Ex. 2, and hereto annexed.)

Q. Can you say whether or not you received them at the same time?

A. I naturally suppose that I received these letters at the same time, enclosed in the same envelope.

Q. You think there was a duplicate of the letter of May 19th, 1871?

A. It strikes me so, sir.

(Objected that the letters are irrelevant and incompetent.)

Q. You know Willmar's handwriting?

A. Yes, sir.

Q. Is that letter (showing witness paper) in his handwriting?

A. Yes, sir.

Q. And do you know the signature of Lippman, Rosenthal and Co.—the manner in which they sign their papers?

A. Yes, sir.

Q. Can you say whether this letter marked Exhibit 2 is signed by that firm?

A. Yes, sir.

833 Q. What was their method of signing their letters—Lippman, Rosenthal and Co.?

A. I think all that I ever had were signed in that way. Firm name printed, and then the names of some members of the firm written underneath.

Q. What, Mr. Moorhead, did you do under this contract of May 12, 1871?

(Objected to as irrelevent and incompetent.)

A. I let the work, grading, &c., of the road to De Graff and Co., and I attended to drawing bills upon Lippman, Rosenthal and Co. or Willmar, and also to the purchasing of all the necessary fixtures for the railroad track, splices, &c., transportation, paying the charges here, and arranging transportation to the point at which the material was used.

Q. A lot of iron was purchased to be used in the construction of the extension lines; that is the fact, is it not?

A. Yes, sir.

Q. Who bought it?

A. Willmar.

(Objected to, as no proper knowledge on the witnesse's part is shown.)

Q. Did you buy it?

A. Never a ton, sir, except the splices made here.

Q. Except the plates and fastenings?

A. Yes, sir; there were rails bought in England.

Q. The rails came into your possession?

A. Yes, sir.

834 Q. What was the whole quantity bought?

A. 30,000 tons, if my memory serves me.

Q. Part of that iron was laid on the extension lines, was it not?

A. Yes, sir.

Q. What was done with the rest of it?

A. I can't say exactly what was done with it, as to the particular quantities. I obtained money from different parties in New York, pledging the iron as collateral.

Q. You sold some of it also, did you not?

A. Sold some.

Q. The iron came from England consigned to you?

A. Yes, sir.

Q. About when did you pledge and sell it, so much as you did pledge and sell?

A. I don't remember the dates; about 1872, after the stoppage of the work.

Q. Who asked you to dispose of it in that way?

A. I had a resolution of the board passed by the board of the First Division of the St. Paul and Pacific R. R. Co. authorizing me to sell, hypothecate, or use it, in any way according to my judgment. I don't remember the terms.

Q. (Showing witness paper). Is that an exact copy of the resolution you refer to?

A. Yes, sir; this is the signature of George L. Becker.

835 Q. That is the seal of the company?

A. Yes, sir.

Q. That is the signature of Geo. L. Becker, president, and that is the seal of the company?

A. Yes, sir.

Q. And that is the signature of the secretary of the company, attesting the seal?

A. Yes, sir; it was on this authority that I sold and hypothecated the iron.

Q. Did Mr. William Crooks or Charles A. De Graff call on you in Philadelphia about the time you sold this iron, or shortly before?

A. Yes, sir; a little before.

Q. Now state what conversation you had with them, stating as nearly as possible at what time it was.

(Objected to as incompetent.)

A. My recollection as to time would have been early in September, 1872. Mr. Crooks, of the firm, came to Philadelphia, and told me that he must have money; that unless I could procure him money there would be a riot on the line of the road, unless he could pay his workmen and laborers; and the road, bridges, and all those things, were in great danger. I immediately telegraphed to Lippman, Rosenthal and Co., or Willmar, in which telegram Crooks joined as contractor. There was no relief offered by the parties to whom I telegraphed. The only

836 available property the company had here was the iron. In conversation with Mr. Crooks, we concluded that money might be obtained by pledging the iron as collateral. I came to New York to see if it could be done. When I came to New York I called upon the New York Guaranty and Indemnity Company, who told me they would make advances provided I had authority from the First Division R. R. Co. to hypothecate the iron, and borrow. It was so important that Crooks should have money, and as he told me to return at once to prevent this great damage and riot, that I arranged with the New York Guaranty and Indemnity Company to make the advance immediately. I pledged myself to obtain the authority within a reasonable time in this way. $200,000 was obtained and sent to Mr. Becker by Crooks, which

he got. Other advances were obtained and sent to Mr. Becker, president of the road, to use at his discretion.

Q. Why did you send to Mr. Becker?

A. As he was the proper party to apply the money, he being president of the company.

Q. Who had personally made the disbursements of the money you sent forward for use on the extensions while you were acting under this 12th of May contract?

A. The president of the company, Mr. Becker.

837 Q. How much had you received at this time, as nearly as you can recollect, from the sale of the fifteen millions of bonds which passed through your hands?

A. Less than a million and a half; in the neighborhood of a million and a half. The figures I don't recollect exactly.

Q. You recollect making an affidavit in the case of Weetjen against the St. Paul and Pacific R. R. Co.?

A. Yes, sir. There I had the data and the books.

Witness is referred to a printed copy of that affidavit and asked if he can say by refreshing his memory from that the exact amount of money he received of the proceeds of the sale of the bonds.

A. This was taken from my books and must be correct—$1,774,084$\frac{46}{100}$.

Q. What had you done with that money at the time this iron was sold?

A. Paid for the construction of the Brainerd and St. Vincent extensions, as follows:

Drafts for contractor's estimates	$1,449,042 35
Inland freights on material to lake ports	148,553 70
Duties on iron	268,341 28
Foreign freights	135,597 69
Inland R. R. freights and engineering	180,296 47
George L. Becker's notes for materials	113,436 57
Locomotives	41,000 00

838 Q. Then, at the time when you sold and pledged the iron that you have spoken of, had you or not paid out for the construction of the extensions more than you had received from the proceeds of the bonds?

A. Yes, sir; very considerably more.

Q. At that time what other means had you of raising money for the building of the extensions than the iron that was on hand?

A. None other.

Q. After you had made your loan from the New York Guaranty and Indemnity Company you got other funds from Jay Cooke and Co., and Vibbard, Foote and Co., did you not?

A. Yes, sir.

Q. State as nearly as you can what that transaction was.

A. The amounts I can't remember. Vibbard, Foote and Co. purchased a large amount of iron, the proceeds of which was applied to the payment of debts that had been incurred, and otherwise. Some of it for debts existing at the time.

Q. Debts of what?

A. Transportation of iron.

Q. Debts incurred in reference to these extension lines?

A. Yes; in reference to the extension lines.

Q. What had Jay Cooke to do with this Vibbard, Foote and Co. transaction?

A. Nothing that I knew of.

839 Q. You say that you had telegraphed, and Mr. Crooks joined you in the telegram, respecting this emergency. Had you before that written Willmar, or Lippman, Rosenthal and Co., about the necessity for raising money?

A. Repeatedly, and telegraphed them the necessity.

Q. You kept copies of those letters?

A. Yes, sir.

Q. (Showing witness paper.) Can you say whether that is a copy of the letter which you wrote to Willmar on the subject?

A. Yes, sir; copied by my clerk.

Q. Can you say whether you sent to Willmar such a letter, of which that is a copy?

A. Yes, sir; I did.

Q. At the time that it bears date?

A. Yes, sir.

(Letter put in evidence, marked Exhibit 4, January 10, and is hereto annexed.)

Q. Can you say whether this is a copy of the letter you wrote to Lippman, Rosenthal and Co. on the same subject? (Showing witness paper.)

A. Yes, sir; that is copied by the same party.

Q. Did you send the letter of which that is a copy to Lippman, Rosenthal and Co.?

A. Yes, sir; at the day of its date.

(Letter put in evidence, marked Ex. 5, January 10, and is hereto annexed.)

Q. Now some of the iron you sold and disposed of as you stated was in Duluth, was it not?

840 A. Yes, sir.

Q. Some of it at Glyndon, in Minnesota?

A. Yes, sir.

Q. What did you do with that iron—the iron at Duluth and Glyndon?

A. Portion of it was diposed of to De Graff and Co.

Q. For what purpose?

A. For the payment of money due them from the R. R. co.—from the First Division Company.

Q. And what was done with the rest of the iron at Duluth?

A. Some of it disposed of to parties here. I cannot recollect exactly the transaction, not having thought of it for a long time.

Q. In that affidavit that you made, and that I have already referred to, you refer to the affidavit made by H. C. Fahenstock. Referring to the printed copy of that affidavit, see if you can recollect the transaction in regard to the Duluth iron.

A. I recollect borrowing money from Jay Cooke and Co., and of course giving them security for it on the iron.

Q. You have spoken of a loan from the N. Y. Guaranty and Indemnity Co. in September. Then you have spoken of a sale to Vibbard, Foote and Co.; when was that?

A. That was in September, in 1872. That I made here when I was in New York.

841 Q. Now, after that, in October, 1872, did you borrow money from Jay Cooke and Co. on some of this iron?

A. In October; yes, I recollect that.

Q. And what was the amount that you borrowed at that time, October, 1872?

A. £40,000 in sterling bills.

Q. Drawn by whom and on whom?

A. Drawn by Jay Cooke & Co., and on Jay Cooke, McCulloch & Co.

Q. Now, state, refreshing your recollection by that affidavit, what you pledged as security for the £40,000 sterling.

A. The iron is stated here which I presume is correct. The iron I know was given to them. I have the marks and numbers in my books in Philadelphia.

Q. I show you 4 bills, and ask whether they were made by you to carry out the transaction of this iron that I have mentioned?

A. Yes, sir.

(Papers put in evidence, marked Ex's 6, 7, 8, 9, January 10, 1877, and are hereto annexed.)

Q. Those are originals, are they not?

A. Yes, sir; and in accordance with the entries in my books.

Q. Now, Mr. Moorhead, in these bills of sale the iron is referred to by the number of pounds. Can you say, by referring to the papers, in what ships the iron that was given as security for the £40,000 sterling was imported?

842 A. I can't state; but I have no doubt of this being the fact, that it was received as stated here.

Q. Please state what those are.

			T.	Cwt.	Qt.	Lbs.
A. Ex. Presto,	4,192 bars	=	825	200		
Nancy M.,	5,916 "	=	1,167	12	2	17.
W. T. Hatfield,	6,291 "	=	1,249	18	2	16.
Blue Jacket,	4,066 "	=	787	800	0	10.

Q. Do you recollect, afterwards, of selling that same lot of iron, with an additional lot, to Vibbard, Foote and Co.?

A. I can't say whether it is the same lot.

Q. (Witness is shown a paper—a letter of April 18, 1873, directed to George E. Bent, and signed Jay Cooke and Co., by Griffin, with a memorandum attached, and asked to state, referring to that paper, whether he had sold the iron last mentioned to Vibbard, Foote and Co., in April, 1873.)

A. George E. Bent was my secretary, who had charge of my books, and all this iron transaction and these figures correspond with those before, which are certainly correct.

Q. State whether or not you sold to Vibbard, Foote and Co., April, 1873, the cargoes of iron that you have specified last above and another lot.

A. Yes, sir; that was sold to them.

Q. And this letter and memorandum state what was sold?

A. Yes, sir.

843 (Papers put in evidence and marked Ex's 10, 11, January 10, 1877, and are hereto annexed.)

Q. What did you do with the £40,000 sterling that you got on the pledge of the iron that you have mentioned?

A. If I recollect rightly it was to renew a loan made by another party.

Q. For what account?

A. Account of the St. Paul and Pacific R. R. Co.

Q. What had it to do with the extension roads?

A. The money was expended on the extension roads.

Q. This memorandum that I have last shown you states that your account with Jay Cooke and Co. had been credited with the amount of $249,701.75 on account of the proceeds of the iron sold to Vibbard, Foote and Co. in April, 1873. What was that account with Jay Cooke and Co.?

A. I kept an account with them and they paid my drafts; for instance, they paid the first loan I made.

Q. What was the nature of that account?

A. It all went to the First Division St. Paul and Pacific R. R. Co.

Q. What did you do with the moneys received from this account?

A. Paid it to the St. Paul and Pacific R. R. Co., First Division.

844 Q. Did that account with Jay Cooke and Co. relate to anything else besides the St. Paul and Pacific R. R. Co.?

A. Nothing else, sir.

Q. And the deposits to the credit of that account were obtained from what source?

A. From the sale of iron which I pledged for R. R. co.

Q. Did you use any of the moneys that you drew from that account for your personal wants?

A. Not a dollar.

Q. Did you use any of the money that you got from any of this iron for your personal wants?

A. Not a dollar.

Q. Did you use any of this money from the proceeds of the iron or from that account for any other purpose than the completion or payment of debts for the completion of the extension lines?

A. No, sir. On the contrary, I advanced personally. They owe me a considerable amount of money. My books will show that.

Q. Who owes you that?

A. Saint Paul and Pacific R. R. Co., First Division.

Q. For what purpose did you make these advances?

A. For the prosecution of the work.

Q. On what?

A. St. Paul and Pacific R. R. extensions.

Q. Did you ever have possession or control of the bonds of this 15 million issue, excepting as you have already stated, or for any other purpose?

845 A. No, sir.

Cross-examination by Mr. SCOTT, on behalf of the plaintiff:

Q. Mr. Moorhead, through what period did the consignments to you from Europe of these 30,000 tons of iron rails run?

A. About 1871 and 1872; they were all within ten or twelve months, purchases and shipments.

Q. Can you state by how many vessels the consignments were made?

A. I can't, sir; a large number of vessels; I should think 20.

Q. They were generally steamships or sailing vessels?

A. All sailing vessels; that is my impression.

Q. What was the form of the consignments?

A. Consignments were made to William G. Moorhead, agent.

Q. Are you sure the word agent was added?

A. That is my impression, but it certainly was to William G. Moorhead.

Q. Do I understand that it is your impression that the word agent was not added?

A. I think that some were and some were not so consigned.

Q. But they were all to William G. Moorhead or William G. Moorhead, agent?

A. Yes, sir.

Q. What became of the shipping and custom-house documents
846 connected with those several consignments?

A. The documents went with the consignments to Duluth—the custom-house documents.

Q. You had them at one time in your possession?

A. Yes, sir.

Q. Where; here or in Philadelphia?

A. Some of them in Philadelphia. I had an agent here to do the custom-house business. I never made a personal transaction here in the custom-house except to sign my name.

Q. Who is the agent who attended to the custom-house business?

A. Mr. Foote.

Q. Of Vibbard, Foote and Co.?

A. Yes, sir.

Q. Well, you mean, don't you, the firm of Vibbard, Foote and Co.?

A. Yes, sir.

Q. And the business may have been transacted personally by either member of the firm?

A. Yes, sir.

Q. Do you know what became of the shipping and custom-house documents more particularly connected with the iron transfer to Jay Cooke and Co. and Vibbard, Foote and Co., in the manner stated in your direct examination?

A. No, sir; I don't.

847 Q. Did you ever have any of those documents in your personal possession?

A. I may have had; I am not certain. My clerk in Philadelphia attended to all that detail.

Q. Were or were not these shipping documents and custom-house documents transferred to these several firms; documents of these two transactions severally?

A. I suppose they would have naturally been transferred.

Q. Have you any recollection of ever seeing either of said or any of those documents since the dates of those several transactions?

A. No, sir.

Q. Will you produce any bills of lading which you have in any place connected with these particular consignments?

A. Yes, sir.

Q. I mean the consignments of the iron included in these two transactions connected with Jay Cooke & Co. and Vibbard, Foote and Co.?

A. Yes, sir.

(It is understood that any papers so produced are to be attached to this deposition.)

Q. In regard to the authority and appointment of Mr. Willmar as agent or supposed agent of Lippman, Rosenthal & Co., of Amsterdam, do you know anything more of your own personal knowledge than that he assumed to act as such agent?

848 A. When in London, before any of these transactions took place, I was taken to an office, Willmar's office, and introduced to him as the agent of Lippman, Rosenthal & Co. He was a citizen of London. In our correspondence with him he designated himself as agent for Lippman, Rosenthal & Co.

Q. Have you any knowledge in regard to his authority other than that derived in the manner stated in your last answer?

A. None, except in correspondence with the firm. They always recognized him as the agent for this specific operation.

Q. Agent of whom?

A. Agent of Lippman, Rosenthal and Co.

Q. You have stated that this iron was bought in Europe by Willmar?

A. Yes, sir.

Q. How do you know that?

A. From his own letters.

Q. You mean to say that he bought it?

A. Yes, sir.

Q. How much of this iron was actually laid on the extension lines?

A. About 13,200 tons.

Q. What is the amount which you received from Cooke, McCulloch and Co. on loans upon the sale of the iron to them, mentioned in your direct examination?

849 A. £40,000 sterling, bills of exchange.

Q. What was the amount received from Vibbard, Foote and Co. upon the sale to them—the sale to them in April, 1873?

A. $\$249,710\frac{25}{100}$.

Q. Now what was the number of tons of iron transferred or pledged Jay Cooke and Co. upon the transaction referred to in October, 1872?

A. 4,040-1-1-15.

Q. And what was the number transferred to Vibbard, Foote & Co. upon the transaction with them?

A. It was the same amount, with 500-2-1-11 added, being part of the cargo by the "Familius Hinde."

Q. Now, Mr. Moorhead, of the iron referred to in your direct examination as having been sent to Duluth and Glyndon how much was sent to Duluth and how much to Glyndon?

A. It all went to Duluth first. It was shipped from Duluth to Glyndon afterwards.

Q. How much of it was afterwards transferred to Glyndon?

A. 1,700 tons.

Q. And the balance remained at Duluth?

850 A. Yes, sir.

Q. Now what was the amount of iron transferred by you to DeGraff and Co. in the manner stated in your direct examination?

A. The 1,700 tons at Glyndon, 1,000 tons at Duluth.

Q. Now what became of the balance of this iron?

A. 100 tons was sold by Becker to St. Paul and Milwaukee; 900 tons B. S. Russell left in his charge as custom-house agent there.

Q. You say that 900 tons of it was left in Russell's charge and 100 tons of it was disposed of by Becker?

A. Yes, sir.

Q. Now what relations have subsisted, and now subsist, between you and Mr. Russell in regard to this iron?

A. He has no claim upon the iron—Mr. Russell.

Q. Under what proceeding does he hold the iron?

A. It was consigned. He did the custom-house business. I think consignments were made to him; I am not quite sure about that. He had charge of the iron. I am not sure whether his name was mentioned in the consignments or not.

Q. He had charge of the iron for whom?

A. For me; in fact, as agent.

Q. Well, then, that iron still belongs to you?
A. If there is any there that is over, it does.
Q. That is, over the 2,700?
A. Yes, sir; and the amount hypothecated here, if there is any besides that.

851 Q. Now, Mr. Moorhead, please state in what instance you remember that the iron was consigned to you from Europe as agent.

A. I could not state any instance.
Q. Have you positive recollection; could you state that that occurred in more than one instance?
A. No, sir; as I stated before, I may be mistaken even as to that. It runs in my mind that it was so consigned.
Q. But it may be that it was not so in any instance?
A. It may be.
Q. Then, if I understand you, you are not willing to-day to state positively that the consignments were to you as agent. They may have been to you as Mr. Moorhead?
A. No, sir; I cannot state positively.

Redirect examination:

Q. Your books and papers are all in Philadelphia, are they not?
A. Yes, sir.
Q. And in testifying here you had to rely on your recollection and such papers as I showed you?
A. Yes, sir.
Q. Now, you said on cross-examination that Russell had no individual claim to the iron; have you anything further to say to that?
A. I recollect, subsequently thinking the matter over, that I sent to Mr. Russell a bill of sale, I think, which was for the iron which

852 had not been disposed of. The exact quantity I don't remember. It was for the protection of parties from whom I had obtained money here.

WM. G. MOORHEAD.

Sworn before me, this 19th day of January, 1877.
E. D. COWMAN,
Notary Public, N. Y. Co.
{ E. W. COWMAN'S NOTARIAL SEAL, N. Y. CO. }

Cross-examination of Mr. William G. Moorhead by Mr. SCOTT, plaintiff's counsel, Jan'y 19th, 1876:

(Defendants' counsel exhibits to witness copy of an agreement purporting to be an agreement between the First Division of the St. Paul and Pacific R. R. Co. and himself, and appearing at page, 68, in blue numbers, of the appeal book, in the case of Lucas H. Weetjen against the St. Paul & Pacific R. R. Co. and others, and asks the witness:)

Q. Is that a copy of the construction contract between yourself and the First Division of the St. Paul and Pacific R. R. Co., referred to in your direct examination?
A. As far as I can recollect, it is, sir. I haven't a copy of it.
(Said paper is marked Ex. 1, of January 19th, 1877.)

8 (Plaintiff's counsel exhibits to witness the prospectus appearing in the same book, at pages 80 to 87, and asks the witness:)

Q. Have you ever seen that prospectus or a copy of it; and, if so, when and where did you first see it?
A. I saw a copy of a prospectus issued by Lippman, Rosenthal and Co. for the sale of those bonds.
Q. About what time, as near as you remember?

A. It was before they commenced selling bonds; some time in the year 1871, I should say.

Q. In that prospectus it is stated that the remainder of the proceeds of the issue of the bonds referred to in the prospectus, after deducting 20 per cent. as reserve to secure the payment of the interest during the first three years, would be paid over upon certificates of the president of the co. and one of the trustees. Can you state how much money was paid over on such orders?

A. I have no doubt the orders are correctly stated at pages 92 and 93 of such printed appeal book.

Q. Without reference to any particular orders, can you state positively or approximately the aggregate amounts which were so drawn?

A. That I could not, sir, except so far as the money came into my hands, which I stated the other day, you recollect.

Q. Have you no idea as to the amount which was received upon the joint orders of yourself and Mr. Becker?

854 A. They never returned me an account (the bankers in Amsterdam, Lippman, Rosenthal & Co.) from which I could state exactly. I remember that distinctly. My secretary used to complain that we could not get an account from them in detail.

Q. In round figures about how much was paid upon such joint orders?

A. I presume that it was £1,189,950 7 1, shown in an affidavit of Lippman & Rosenthal which you now show me.

Q. Have you any doubt that over a million pounds was so drawn and received?

A. No, sir.

Q. Please state the aggregate amount which was received by you directly.

A. £328,800 3 3, which amounted in U. S. currency to $1,774,084.46.

(Plaintiff's counsel exhibits to witness the resolution of the board of directors of the First Division Company, dated September 17, 1872, Exhibit, Jan'y 10, No. 3, and asks witness:)

Q. When and under what circumstances did you first see this paper?

A. I was present at the meeting of the board; the paper was drawn by the president of the First Division St. Paul and Pacific R. R. Co., George L. Becker, and passed by a majority of the board. I saw the secretary apply the seal of the company to it.

855 Q. Were you a member of the board at that time?

A. Yes, sir.

Q. Did you vote upon the passage of that resolution?

A. I presume so; every member present voted in its favor—for its passage.

Q. At whose suggestion and upon what recommendations was this resolution passed?

A. It was passed for the purpose of enabling me to hypothecate iron—railroad iron—belonging to the company, to obtain money for the relief of the contractors and other pressing demands.

Q. Was it passed in pursuance of or to complete any arrangement which you had made prior to that date with any person or persons?

A. Yes, sir; an arrangement had been made upon a letter from Mr. Becker, authorizing me, as president of the company, to make such loan, which was not satisfactory to the parties from whom I proposed to make the loan, and thereupon I wrote Mr. Becker for a document similar to this.

Q. Who were the parties who were not satisfied with Mr. Becker's letter, and who required, in addition, the passage of the resolution in question?

A. The N. Y. Guaranty and Indemnity Co. of this city.

Q. Who represented Jay Cooke and Co. in making the advance at the time of the first hypothecation of iron made to them pursuant to this resolution?

A. Mr. Garland.

856 Q. Were Mr. French and Mr. Garland informed at the date of this hypothecation of all the circumstances attending the passage of this resolution?

A. They certainly knew of the authority that I was clothed with.

Q. Do you know whether they were or not informed at this time that the N. Y. Guaranty and Indemnity Co. had required the passage of this resolution as a condition of their loan?

A. They were.

Q. In what capacity were the amounts so received by you, personally and upon the joint orders of yourself and Mr. Becker, as the proceeds of the sale of the construction bonds, so received?

A. In a double capacity—trustee and construction agent.

Q. Since your cross-examination was suspended on the 10th instant, have you been able to find, and, if so, will you now produce, any of the custom-house documents connected with the importation of the iron at Duluth and Buffalo, covered by the pledges mentioned in your direct examination?

A. Yes, sir; and I now produce the warehouse entries for transportation, showing the iron which went to Duluth.

(Said papers are marked Exhibits 3, 4, & 5, for the plaintiff.)

Redirect examination by Mr. HUBBARD:

857 Q. What, if anything, did you have to do with preparing or issuing the prospectus for the sale of the $15,000,000 of bonds that has been shown you by Mr. Scott?

A. I had nothing to do with the preparation or issue; they were made in Amsterdam, in Europe.

Q. Do you know where the orders for payments, which were signed by yourself and Mr. Becker, and mentioned in your cross-examination, were originally drawn?

A. Yes, sir; they were drawn by Lippman, Rosenthal and Co., or Willmar, their agent, in every instance.

Q. Through what channels, so far as you know, did they come to you?

A. Through Willmar.

Q. Who signed them first, you or Mr. Becker?

A. Mr. Becker generally, if not always.

Q. What did you do with them after you had signed them?

A. Returned them to Willmar.

Q. Where did you send them?

A. To London.

Q. When you signed those orders did you know the specific purpose for which the money referred to in them was to be used?

(Objected to as immaterial.)

A. It was generally expressed in the order.

Q. Were the orders made at your request?

(Same objection.)

858 A. No, sir; they were drawn in Europe, and sent to us with the request to sign them and return.

(Objected to as incompetent.)

Q. Who made the disbursements under those orders, so far as you know?

(Objected to as incompetent and immaterial.)

A. Willmar, so far as the purchases of iron; Lippman, Rosenthal & Co., as to the balance.

Q. You have already stated, I think, that none of the proceeds of the issue of $15,000,000 of bonds ever came into your hands, excepting £328,800 3 3, amounting in U. S. currency to $1,774,084.46?

A. Yes, sir.

Q. Can you say whether any of said proceeds besides this amount came to this country?

A. I think not. None of it did come to this country to my knowledge.

Q. Why did you sign these various orders under which disbursements were made in Europe?

(Objected to as incompetent and immaterial.)

A. At the solicitation of the bankers in Europe, who stated from time to time that it was necessary to make certain payments in order to enable them to sell the bonds, $15,000,000.

(Last part of this answer is objected to as incompetent and hearsay.)

859 Q. You have stated, in answer to a question by Mr. Scott, that you received certain moneys, the proceeds of the $15,000,000 issue, in a double capacity, both as construction agent and trustee. Have you any explanation to make of that answer?

A. I meant to say that the orders were signed in that way, in that capacity, but the money, the accounts of the disbursement of that money, that I received were always as William G. Moorhead, construction agent. All the accounts were kept in that way; the money was disbursed by me as construction agent.

(Answer is objected to as incompetent.)

Q. Did you receive, or did you understand that you received, any of the money in your capacity as trustee?

(Objected to as incompetent.)

A. No, sir; I did not.

Q. In your cross-examination on the 10th of January you were asked this question: "Well, then, that iron still belongs to you?" And your answer is: "If there is any there that is over, it does." Is there any iron in Duluth that you now claim or that you suppose belongs to you?

A. I think it has all been appropriated; none over to my knowledge.

Q. What do you mean by the word "over" in that answer?

A. Not already pledged, sold, or used on the road.

860 Q. Do you know whether Lippman, Rosenthal and Co. or Willmar sent duplicates or different sets of orders for disbursements in Europe?

A. Yes, sir; they changed the orders on several occasions; withdrew one set and sent others.

Q. Why did they do that, if you know?

(Objected to as incompetent.)

A. I had no explanation from them, except that they wished me to sign those orders and return them in lieu of others.

Q. And you did sign new orders as requested?

A. Yes, sir.

(Same objection.)

Q. Do you know whether, in fact, Lippman, Rosenthal and Co. or Willmar had disbursed any of the moneys covered by the orders you have mentioned before the orders were made?

(Objected to as incompetent and irrelevant.)

A. If I recollect distinctly, they demanded orders from us for interest

which they had paid on $6,000,000 loan bonds of the First Division St. Paul and Pacific R. R. Co., which were sent.

Q. In the letter signed by Leo Lippman and George Rosenthal, and marked Ex. No. 2, of January, 1877, it is stated that the authority given to Lippman, Rosenthal & Co. to deduct from the proceeds of sale of the 15,000 bonds the amount wherewith to pay the coupons of other issues when due must be extended to the said 6,000 bonds issues
861 of '68 and '69, and for the sake of regularity the writers await an authority in due form to this effect. Do you know, from an examination of the accounts of Lippman, Rosenthal & Co., in the printed book or otherwise, whether they had made payments for interest on the 6,000 bonds before orders were given them covering those payments?

(Objected to as incompetent and irrelevant.)

A. Yes, sir; they had made the payment before orders were sent.

Q. Can you say under whose directions Willmar bought the 33,000 tons of railroad iron in Europe?

(Objected to as incompetent.)

A. He suggested to me in the first instance he could purchase the iron in London from Benson & Co., with whom he had been in the habit of dealing advantageously, and desired me to send him the form of iron, which I obtained from the engineer of the road.

Q. Did you direct Willmar how much to buy?

A. Yes, sir; I told him how much it would require for the road; 30,000 to 33,000 tons, if I recollect.

Q. Did you direct him when to buy?

A. Yes; to buy promptly.

Q. Did you direct him on what terms to buy?

A. Yes, sir; to buy it on credit, in order to have the money to use for the construction here.

(Answer objected to as incompetent and irrelevant.)

862 Q. Did he buy it on credit, as you had directed?

(Objected to as incompetent and irrelevant.)

A. No, sir.

Q. How, if you know, did he buy it; did he buy it for cash?

A. He paid the cash for it. I had written him that he could buy the iron on 6 or 9 months' credit, and by having an acceptor there he could carry it for almost an indefinite period, which would enable us to complete the road by using the money here. That I remember distinctly.

Q. Can you say whether the orders signed by Mr. Becker and yourself, and which were used as covering the disbursements for iron, were made before or after the iron was in fact purchased?

(Objected to as incompetent and irrelevant.)

A. After the contract was made.

Recross-examination:

Q. Can you state whether the bills of lading by the Presto, Familius Minde, and Nancy M. corresponded, so far as your designation as consignee was concerned, with that designation as expressed in the three warehouse entries produced by you to-day?

A. I think that the bills of lading were "William G. Moorhead, construction agent," but as to the amounts they would correspond.
863 That is my impression in regard to the general consignments, though I am not able to discriminate between any particular vessels.

Q. Have you searched among your papers for the original bills of lading of the iron by these 3 vessels?

A. Yes, sir.

Q. You have, and have not been able to find them?

A. Yes, sir. My impression is that they are at St. Paul, at the office of the First Division Co.

Q. Did you sign orders in some form or other for the whole of the $1,774,084.46 received by you personally and stated in your direct and cross-examination?

A. Yes, sir; bills of exchange; that was the way in which I drew them.

Q. You didn't give any orders for that, then?

A. No, sir.

Q. In what form were those orders given?

A. By bills of exchange, which I had cashed in the market here and in Philadelphia.

Q. How did you sign those bills of exchange; "William G. Moorhead, construction agent," invariably?

A. That is my impression.

Q. Are you positive about that?

A. I think there was no exception.

Q. Where are those bills of exchange?

The bills are in the hands of the parties on whom they were drawn, viz, Lippman, Rosenthal and Co. or Willmar, I suppose.

864 Q. Are you positive that these bills were signed by you "William G. Moorhead, construction agent," and not "William G. Moorhead," or "William G. Moorhead, trustee"?

A. So far as my recollection goes I can't be positive, because there might be some exceptions. I have no recollection of having signed them in any other way.

Q. Have you a positive recollection that you did sign them as construction agent?

A. Yes, sir. If I didn't, I ought to have done so, and I suppose I did.

Q. Is the knowledge that you signed them as construction agent based upon any other idea than that you ought to have so signed them, as stated in your last answer?

A. My impressions are, as I stated in the beginning, that they were signed in that way.

Q. Is not your impression based upon the idea that you should have so signed them? Are you positive that you didn't sign some of those bills as "William G. Moorhead, trustee"?

A. I am not sure.

Redirect:

Q. Did you draw any bills on Lippman. Rosenthal & Co. or Willmar, to get funds for the construction of the extensions, which they did not accept or pay?

865 A. Yes, sir.

Q. Before or after you pledged or sold this iron to raise funds?

(Objected to as incompetent and irrelevant.)

A. Before.

WM. G. MOORHEAD.

Witness:

WM. J. DUFFY.

Sworn before me, the 19th day of Jan'y, 1877.

{ E. D. COWMAN'S NOTARIAL SEAL, N. Y. CO. }

E. D. COWMAN,
Notary Public, N. Y. Co.

Exhibit No. 1, Jan'y 10, '77.

{ E. D. C.'S NOT. SEAL, N. Y. CO. }

E. D. COWMAN.

AMSTERDAM, 19*th Mai*, 1871.

To the First Division of the St. Paul and Pacific Railroad Company, St. Paul, Minnesota:

GENTLEMEN: We have the honor to acknowledge the receipt of your communication under date of April 19th, 1871, signed by your president and trustee, Mr. George L. Becker and Mr. Wm. G. Moorhead, sealed and attested by the secretary, Mr. Sam'l S. Breed, with reference to the fifteen thousand (15,000) bonds of one thousand ($1,000) dollars each to be issued for the construction of the St. Vincent and Brainerd extensions, and regulating the conditions of sale of these bonds exclusively entrusted to us, and whereon you propose to pay us a commission of three (3) per cent. on the nominal amount of the bonds sold and two (2) per cent. on the amount realized.

866

This emission of bonds will be made at the minimum price of seventy (70) per cent., and you agree that the sum of forty (£40) pounds on each thousand ($1,000) dollar bond sold shall be converted by us unto United States bonds to provide for the payment of coupons on bonds so sold, and you also agree to us retaining from the proceeds of the sales the English and Dutch stamp duty, as the bonds make mention that the duty imposed by the United States Government will be paid by the company.

We have to observe that the payment of the coupon of November 1st next will absorb the guarantee fund of the bonds of 1868, issued in 1869. The authority given to us by the company to deduct from the proceeds of the sale of the fifteen thousand (15,000) bonds above mentioned to be issued the amount wherewithal to pay the coupons of the other issues when due must be extended to the said six thousand (6,000) bonds issue of 1868 and 1869, and for the sake of regularity we await authority in due form to this effect.

It is further understood that the company allow us one-fifth ($\frac{1}{5}$) florin, Dutch currency (= 0.20), per £ sterling upon all our remittances to London. Per contra, we undertake from time to time to make advances to the company of from forty to eighty thousand (40,000 to 80,000) pounds sterling, in the event of the bonds not finding as rapid a sale as the construction wants necessitate, and providing bonds in our hands amply cover such advances. Upon such eventual advances it is understood that we shall be allowed to charge the commission formerly agreed, of two (2) per cent. per three (3) months, which commission includes the interest upon our advances, as we have no interest account at all with the company.

867

We are, gentlemen, yours very truly,

LIPPMAN, ROSENTHAL AND COMP'Y.
LEO LIPPMAN.
GEORGE ROSENTHAL.

Ex. 2, Jan'y 10th, 1877.

{ COWMAN'S NOTARIAL SEAL, N. Y. CO. }

E. D. COWMAN.

3 EAST INDIA AVENUE, LEADENHALL STREET,
London (*E. C.*,) 27 *January*, 1872.

MY DEAR SIR: I have had the enclosed letter in my possession for some time past, and do not know how I omitted sending it sooner. Pray excuse the delay and kindly let me know the due receipt of this document.

Yours, truly,

L. WILLMAR.

W. G. MOORHEAD, Esq'r, *Philadelphia.*

868 Jan. 10th, '77.—No. 3.

Resolved, That Wm. G. Moorhead, construction agent, be, and he is hereby, authorized to pledge, hypothecate, sell, or dispose of the iron rails of this company now in New York or elsewhere, or hereafter to arrive, for such sums and upon such terms as are in his judgment best for the interest of this company, for the purpose of raising the money necessary to meet past and future estimates for construction account St. Vincent and Brainerd extensions, and for duties, freight, and advances for same account.

The foregoing is a true copy of a resolution passed by the board of directors of the First Division of the St. Paul and Pacific Railroad Company at a meeting held in Chicago, Sept. 17, 1872.

(S'g'd) GEO. L. BECKER,
President.

Attest:
[L. S.] SAM'L S. BREED,
Secretary.

CITY AND COUNTY OF NEW YORK, *ss:*

I hereby certify that the foregoing is a true and correct copy of the original copy resolution referred to in the annexed deposition of William G. Moorhead, and of the whole and every part thereof.

Witness my hand & seal of office, at the city of New York, Jan. 10, 1877.

E. D. COWMAN,
Notary Public, N. Y. Co.

(Endorsed:) Resolution of the board of directors of the 1st. Div. St. P. & P. R. R. Co., authorizing W. G. M., cons. ag't, to hypothecate R. R. iron.

869 Jan'. 10, '77, Ex. No. 4.

E. D. COWMAN.

{ COWMAN'S NOTARIAL SEAL, N. Y. CO. }

JUNE 4*th*, 1872.

L. WILLMAR, Esq.:

MY DEAR SIR: I cabled you this a. m., copy of which is enclosed. There is a positive necessity for paying the monthly estimates regularly, or we can't complete the work. Nor is it less so to pay the duties, freights, bills for joints, spikes, bolts, etc. The time is short, and the payments must, therefore, be large for some months to come. I cannot obtain the money otherwise than by drafts or bills upon your London ag't. These bills might be for sixty days, which would give that additional time. Now, what am I to do? Unless you can supply the means I am powerless, and the work will stop. The workmen will turn out, and cannot be retained on the line while there is so much demand for them on other roads. I am quite willing to do everything possible to expedite the construction, but, my good friend, I cannot go beyond that.

I wish you to communicate these views to Messrs. Lippman and Rosenthal. I would write them, but you might think it interfering with your position, as everything thus far has passed through your hands. If we work together cordially, the end will be accomplished. Other-

wise, years of regret cannot repair the loss and damage of delay at this particular time.

870 The construction is progressing finely, and I am assured by engineer and contractors that it will be completed late this autumn, provided there is no interruption for want of means.

I therefore again beg you to look the matter squarely in the face. Strain a point, if necessary, to place us in funds. I trust my bills in hands of Messrs. Jay Cooke, McCulloch and Co. have been paid, and that the cable of this morning will be favorably responded to.

I am going out of town a few days on business.

Very truly yours,

WM. G. MOORHEAD,
Construction Agent.

Cablegram referred to above:

WILLMAR, *London:*

Morris reports May estimates one hundred and eighty thousand. Can I draw for order twenty-five? Has McCulloch been paid? Must draw, or work will stop.

MOORHEAD.

NOTE.—Order No. 25, sent you April 8th, '72, was for £40,000, which was proposed to be drawn in one draft.

Jan'y 10, '77, No. 5.

E. D. COWMAN.

[E. D. C.'S NOT. SEAL, N. Y. CO.]

JUNE 4*th*, 1872.

Messrs. LIPPMAN and ROSENTHAL:

871 GENTLEMEN: I deem it my duty to write to you personally on the subject of the St Paul and Pacific Railroads, which are being constructed through your instrumentality as financial agents, and myself as construction agent, designated by Mr. Willmar. With the latter I am in almost daily correspondence, as your representative or agent in London. Sometimes I think he is not fully alive to the importance of our pushing the work forward with unusual energy during the season when work can be done to advantage, which is the present and the next five months, after which time it will be impossible to lay the track or complete the road. We have until March, 1873, to complete the work, which, practically, means December 1st, next, as nothing can be accomplished of importance after that period. If we fail to complete or open the road for business during the time given by act of Congress, I do not hesitate to say that the grant will be forfeited. Several efforts were made during the last Congress for the extension of similar land grants, but in every instance, I believe, without success. This, then, becomes a matter of serious importance, and dare not be trifled with. I need not say to you that our land grant is a most valuable one, worth, doubtless, an amount equal to the cost of the road. Why, then, should there be any hesitation on your part to advance the means required for the rapid prosecution of the work?

I am obliged this day to provide fifty thousand pounds to meet estimates due, or stop the work. The latter I would not do without

872 an understanding from yourselves. Mr. Willmar refused the acceptance of my drafts hitherto for £25,000, because the report of the superintendent of the road at St. Paul had varied in some measure

from the form desired by Mr. Willmar, with which I had nothing to do, and now he declines accepting my bills until I send more bonds. I cabled him that I had no more bonds in my possession, but would urge them from St. Paul as fast as possible, and forward them to London without delay. One thousand will be shipped by steamer next Wednesday, I trust, when, in accordance with his cable, I will draw for £40,000.

I cannot see how either of the foregoing reasons can be regarded sufficient to peril the success of this great enterprise in which you and the holders of the bonds are so deeply interested. Jay Cooke and Co. have no personal interest in this matter; neither have I, beyond that of being construction agent. If I had done on this occasion as most agents under the circumstances would have done, to wit, notify the contractors that they must wait for their money, I doubt not the completion of the road within the required time would have been thereby rendered impossible. We can't afford to allow the workmen to leave the line, nor operations to be suspended for one day. Hence it is that I say that I fear Mr. Willmar cannot be aware of the necessity of promptness in furnishing the means.

873 I have borrowed the money individually for payment of the estimates now due, and will draw for £40,000 when I ship the one thousand bonds, which are expected here daily (which Mr. Willmar has authorized me to do), and repay so far as that will go the amount thus borrowed. We will need at least £60,000 for this month's expenses, including the estimates payable July 4th. I wish to be authorized to draw it in two bills of £30,000 each, say 29th inst. and 10th July, and for the succeeding months please authorize regular weekly drafts to meet the amount actually required, of which we will notify Mr. Willmar by cable.

I trust there will be no delay in these arrangements. The work is progressing very satisfactorily, and the business shall have my best attention. There are now about three thousand men employed, and that force will be increased for a few months to come if laborers can be obtained. Regreting to trouble with this letter, I remain,

Yours respectfully,

WM G. MOORHEAD,
Construction Ag't.
E. D. COWMAN.

{ E. D. C.'S NOT. }
{ SEAL, N. Y. CO. }

Jan'y 10, 1877, Exhibit No. 6.—Copy.

E. D. COWMAN.

[First Division St. Paul and Pacific Railroad office, No. 114 South Third st., up stairs.]

PHILADELPHIA, *Oct.* 4, 1872.

Bought of Wm. G. Moorhead, construction agent
874 First Division St. Paul and Pacific R. R. Co., cargo of iron pr. W. S. Hatfield, stored in bond at Brooklyn, to say: Tons 1,249–18–2–18 Eng. R. R. iron, at $60 per ton in bond..... ..... $75,025 98

Rec'd pay't.

WM. G. MOORHEAD,
Construction Agent First Div. St. Paul and Pacific R. R. Co.

CITY AND COUNTY OF NEW YORK, *ss:*

I hereby certify that the foregoing is a true and correct copy of the original bill referred to in annexed deposition of Wm. G. Moorhead as

Ex. No. 6, of January 10, 1877, and of the whole and every part of such original.

Witness my hand and seal of office, the city of New York, January 10, 1877.

{ COWMAN'S NOT. SEAL, N. Y. CO. }

E. D. COWMAN,
Notary Public, N. Y. Co.

Jan. 10, '77. Ex. No. 7.
Copy.

E. D. COWMAN.

[First Division St. Paul and Pacific Railroad. Office, No. 114 South 3d st., up stairs.]

PHILADELPHIA, *Oct. 4th*, 1872.

Bought of Wm. G. Moorhead, construction agent First Division Saint Paul and Pacific R. R. Co.,
875 cargo of iron, p'r ship Blue Jacket, to arrive as p'r bills lading, to say: Tons 797, 8, 0, 10 Eng. R. R. iron, at 60$ per ton in bond..... $47,844 27
Rec'd pay't.

WM. G. MOORHEAD,
Construction Agent First Div. St. Paul and P. R. R. Co.

CITY AND COUNTY OF NEW YORK, *ss:*

I hereby certify that the foregoing is a true and correct copy of the original bill referred to in the annexed deposition of William G. Moorhead as Ex. No. 7, of Jan'y 10, 1877, and of the whole and every part of such original.

Witness my hand and seal of office, at the city of New York, Jan'y 10, 1877.

E. D. COWMAN,
Notary Public, N. Y. Co.

{ COWMAN'S NOT. SEAL, N. Y. CO. }

Jan'y 10th, 1877. Exhibit No. 8.
Copy.

E. D. COWMAN.

[First Division St. Paul and Pacific Railroad Office, No. 114 South Third street, up stairs.]

PHILADELPHIA, *Oct. 4th*, 1872.

Bought of Wm. G. Moorhead, construction agent First Division St. Paul and Pacific R. R. Co., 800 tons Eng. R. R. iron, in bond at Duluth, Minn., at $60 per ton in bond.. $48,000 00
Rec'd p't.

WM. G. MOORHEAD,
Construction Agent 1st Div. St. P. & P. R. R. Co.

876 CITY AND COUNTY OF NEW YORK, *ss:*

I hereby certify that the foregoing is a true and correct copy of the original bill referred to in the annexed deposition of William G. Moorhead as Ex. 8, Jan'y 10th, 1877, and of the whole and every part of such original.

Witness my hand and seal of office, at the city of New York, Jan'y 10, 1877.

{ COWMAN'S NOT. SEAL, N. Y. CO. }

E. D. COWMAN,
Notary Public, N. Y. Co.

Jan. 10, '77, Exhibit No. 9.—Copy.

E. D. COWMAN.

[First Division St. Paul and Pacific R. R. Co. office, No. 114 South Third street, up stairs.]

PHILADELPHIA, *Oct.* 4, 1872.

Bought of Wm. G. Moorhead, construction agent, First Division St. Paul and Pacific R. R. Co., 1,166 tons Eng. R. R. iron, in bond at Buffalo, N. Y., at $60 per ton in bond. $69,960 00
Rec'd payment.

WM. G. MOORHEAD,
Construction Agent First Division St. Paul and Pacific R. R. Co.

CITY AND COUNTY OF NEW YORK, *ss:*

I hereby certify that the foregoing is a true and correct copy of the original bill referred to in the annexed deposition of William G. Moorhead as Ex. No. 9 (nine), January 10, 1877.

Witness my hand and seal of office, at the city of New York, Jan. 10, 1877.

E. D. COWMAN, [SEAL.]
Not. Pub., N. Y. Co.

877 Jan. 10, 1877, Ex. No. 10.—Copy.

E. D. COWMAN.

[Jay Cooke and Co., New York, Philadelphia, Washington. Jay Cooke, McCulloch and Co., London.]

NO. 20 WALL ST., NEW YORK, *Ap'l* 18, 1873.

GEO. E. BENT, Esq'r.,
Sec'y St. Paul and Pacific R. R., Philadelphia:

DEAR SIR: We are this day in receipt of your favor of 17th, and hand you herewith memorandum of $249,710.25 paid by Vibbard & Foote, Ap. 16, ⅜ of iron per Presto, Familius Minde, Nancy M., W. T. Hatfield, & Blue Jacket.

Respectfully,

JAY COOKE AND CO.,
GRIFFIN.

CITY AND COUNTY OF NEW YORK, *ss:*

I hereby certify the foregoing is a true and correct copy of the original letter referred to in the annexed deposition of William G. Moorhead as Ex. No. 10, January 10, 1877, and of the whole and every part thereof.

Witness my hand and seal of office, at the city of New York, January 10, 1877.

{ E. D. COWMAN'S NOTARIAL SEAL, N. Y. CO. }

E. D. COWMAN,
Notary Public, N. Y. Co.

878 Jan. 10, 1877, Exhibit No. 11.—Copy.

E. D. COWMAN.

Iron bought by V., F. and Co., and paid for April 16, '73.

Presto	4,192 bars, tons	825–2–0–0		
Famil's Minde	2,548 " "	500–2–1–11		
Nancy M	5,916 " "	1,167–12–2–17		
		2,492–17–0–0, @ 55		$137,106 75
W. T. Hatfield	6,291 bars, tons	1,249–18–2–16		
Blue Jacket	4,066 " "	797–8–0–10		
		2,047–6–2–26, @ 55		$112,603 50
Tons, 4,540–3–2–26				$249,710 25

CITY AND COUNTY OF NEW YORK, ss:

I hereby certify that the foregoing is a true and correct copy of the original memorandum accompanying Ex. No. 10, & referred to in the annexed deposition of William G. Moorhead as Exhibit No. 11, January 10th, 1877, and of the whole and every part of such original.

Witness my hand and seal of office, at the city of New York, Jan'y 10, 1877.

E. D. COWMAN,
Notary Public, N. Y. Co.

[Folios 879, 880, erased.—PRINTER.]

881 Pl'ff's Ex. 1, Jan'y 19, 1877.

E. D. COWMAN. [HIS SEAL.]

Exhibit D, referred to in the foregoing complaint.

This agreement, made and entered into this twelfth day of May, A. D. one thousand eight hundred and seventy-one, between the First Division of the St. Paul and Pacific Railroad Company, party of the first part, and Wm. G. Moorhead, esq., of Philadelphia, party of the second part, witnesseth.

That the party of the second part undertakes, for and in consideration of the agreement hereinafter mentioned to be kept and performed by the party of the first part, to build and equip as required by the laws of the United States and of the State of Minnesota in relation thereto, and in accordance with the profiles and plans of the chief engineer of said company, the lines of railroad from Sauk Rapids to Brainerd, and from some point on the branch line of the railroad of said first party at or near the St. Cloud Station to St. Vincent, all in the State of Minnesota, and equip the same with a sufficient amount of rolling stock, said work to be prosecuted as rapidly as can be done, with money furnished therefor by the party of the first part from the sales of the issue of bonds hereinafter mentioned.

In consideration of the foregoing undertaking on the part of the said party of the second part, and of the completion and equipment
882 of the said lines of road in the manner hereinbefore specified, the said party of the first part agrees to pay to the said party of the second part all the net proceeds of its issue of bonds, amounting to fifteen millions of dollars, such payments to be made as the work progresses, and upon the estimates of the chief engineer of the party of the first part.

In witness whereof the parties hereto have subscribed these presents, at the city of New York, on the day first above named, and the said party of the first part hath also caused its seal to be hereunto attached.

{SEAL OF THE FIRST DIV. ST. P. & P. R. R. CO.} GEO. L. BECKER,
President of the First Division of the St. Paul and Pacific Railroad Company.
WM. G. MOORHEAD.

In presence of—

Pl'ff's Ex. 1, Jan. 19, '77.

E. D. COWMAN. {COWMAN'S NOTARIAL SEAL, N. Y. CO.}

883 Ex. 2, of January 19th, 1877.

E. D. COWMAN. [E. D. C.'S SEAL.]

The First Division of the Saint Paul & Pacific Railroad Company.

UNITED STATES OF AMERICA. STATE OF MINNESOTA.

Saint Vincent and Brainerd extensions.

Issue of $15,000,000 United states currency, or £3,000,000 sterling, 7 per cent., first-mortgage extension bonds, in 15,000 bonds of $1,000 United States currency, or, at the fixed exchange of 4s. to the dollar
884 £200 sterling, bearing interest at 7 per cent. per annum from 1st July, 1871, payable half yearly by coupons attached. Principal repayable at par on the 1st January, 1901, unless sooner redeemed by purchase of the trustees. Principal and interest payable, at the option of the holder, in New York in United States currency, or in London in sterling, at the fixed exchange of 4s. to the dollar, free of all Federal taxes in the United States. Issue price in London £148 per $1,000 bonds, being 74 per cent. upon the nominal value.

The First Division of the St. Paul and Pacific Railroad Company of the State of Minnesota, in the United States, is prepared to receive, through its bankers, Messrs. Lippman, Rosenthal and Co., in Amsterdam, or through Messrs. Robert Benson and Co., their correspondents in London, subscriptions for $15,000,000 United States currency, or £3,000,000 sterling, seven per cent. first-mortgage extension bonds.

The companies interested in the railways which are the object of this issue are two, the Saint Paul and Pacific Railroad Company, subsequently referred to as the original company, and the First Division of the Saint Paul and Pacific Railroad Company, an off-shoot from the former, but now a distinct company, and subsequently referred to as the First Division Company.

885 The First Division Company is the owner of two lines of railway through some of the most fertile part of the State: one, which is open and at work, called the branch line, extending from the capital, St. Paul, southwards to Watab; and one, called the main line, extending westward from St. Anthony (a station on the branch line) to Breckenridge, on the Red River of the North. The first 135 miles of the main line (including the most difficult part of the work) and the bridge across the Mississippi were completed in 1870; the rails, &c., for the remainder, are purchased, and the whole is expected to be completed September next.

By an act of the State of Minnesota approved 6th February, 1864, and an act of Congress approved 3d March, 1871, the original company has been authorized to construct two extensions from the branch line. One will commence at St. Cloud, a station on the branch line, will cross the Northern Pacific Railroad, and will terminate at St. Vincent, a town in Pembina County, on the Red River of the North, and on the British frontier; at this point it will have the benefit of connecting with upwards of 1,000 miles of available river and lake communication, to which will probably before long be added the railway communications which are being projected in the British possessions. The other extension will start from Watab, the present terminus of the branch line, and will proceed to Brainerd, where it will form another junction with the Northern Pacific Railroad.

886 The Northern Pacific Railroad, with which the proposed extension will be connected at two points, now in full working order from Duluth, on Lake Superior (where it is connected with the system of the Great Lakes), to Brainerd, at which place a bridge over

the Mississippi River is erected. The grading of the line for nearly 266 miles westward is completed, the rails are being laid, and it is hoped by September next trains will run from Lake Superior to the Red River.

The new extensions will thus be connected with the most important lines of railway, lake, and river communications.

Ex. Jan'y 19, '77. E. D. Cowman. [SEAL].

The length of the St. Vincent extension is about 293 miles, and of the Brainerd extension about 55 miles.

To aid in their construction, Congress and the State of Minnesota have granted to the original company lands lying along the extensions, at the rate of ten sections of one square mile each for every mile of the extensions, to be conveyed to the company as the line is constructed. The total amount of the lands thus granted is about 2,227,000 acres, and comprises some of what is known as being among the best lands in the State.

According to the report of 1869 of the assistant secretary of state for Minnesota, the cultivated area of that State had increased from 1,900 acres in 1850 to 1,387,470 in 1868, and the population had increased from 5,354 in 1850 to 470,000 in 1870, exhibiting a
887 more rapid rate of progress than any other State in the Union.

Upon the same authority, there were in the State at the date of his report 749 miles of railway completed, and 601 under construction. St. Paul, the capital of the State, with a population of about 25,000, is connected with the great commercial city of Chicago and with Lake Superior and other parts of the Union by a network of railways in active operation.

A lease of the extensions for 99 years has been granted by the original company to the First Division Company, dated April 1st, 1871, under which the latter is to construct, equip, and work them. For that purpose it is to issue the bonds now offered, payment of the principal and interest of which is secured by a mortgage, dated the 1st April, 1871, made by the original company to Horace Thompson and Geo. L. Becker, of Saint Paul, Minnesota, and William. G. Moorhead, of Philadelphia, as trustees for the bondholders. The mortgage comprises the extensions with their plant and rolling stock, and all the lands granted by Congress in respect thereof.

The average price at which lands granted to the First Division Company in respect of its other line were last year sold is $7.68 per acre. At that rate the lands mortgaged to secure the present issue would produce $17,103,360, being considerably in excess of the bonds now to be issued, and the bondholders will in addition have the security of the 348 miles of railway, with its rolling stock, plant, &c.

888 All the proceeds of the sale of the lands are to paid over to the trustees. Sales may be made upon credit for any period not exceeding four years, but the land is to remain as security for the payment. Bonds of the present issue, or matured coupons thereon, are to received at par in payment for lands. This will tend to produce a local demand for them until the price rises to par.

All bonds given in payment for lands are to be canceled.

The trustees are also to receive all the revenues arising from the working of the extensions, and to apply both that and the proceeds arising from the sale of the lands first in payment of the interest on the bonds, and then in purchase of the bonds themselves, at the lowest price, not exceeding a premium of 10 per cent. above their nominal value, by advertisement and tender, or by purchase on the stock exchange of London, Amsterdam, or New York.

Ex. 2, Jan'y 19, '77. E. D. Cowman. [SEAL].

Full power is given to the trustees to take possession of and sell the extensions in case of default in payment of the principal or interest of the bonds.

The whole of the proceeds of the bonds will be invested by Messrs. Lippman, Rosenthal and Co. in United States Federal Government securities. A sum equal to 20 per cent. on the nominal amount issued will be held by them as a reserve to secure the payment of interest during the first three years, which period it is believed will be amply
889 sufficient not only for construction but also for the development of the traffic. The remainder of the proceeds of the issue will only be paid over by him on certificates of the president of the company and one of the trustees authorizing the payment.

The bonds will be of $1,000 United States currency, equal, at the fixed exchange of 4s. per dollar, to £200 sterling each. They will bear interest at 7 per cent. per annum from the 1st of July, 1871. The principal will be payable at par on the 1st of January, 1901, unless sooner redeemed by the trustees out of the proceeds of sale of the mortgaged lands and the revenues of the extensions.

Both principal and interest will be payable, free of all United States Federal taxes, at the option of the holder, in New York in United States currency, or in London in sterling money, at the fixed exchange of 4s. to the dollar.

Ex. 2, Jan'y 19, '77. E. D. Cowman, [E. D. C.'s not. seal, N. Y. Co.]

The bonds will be issued bearing interest from 1st July, 1871, at £148 per bond of $1,000 (equal, at the fixed exchange of 4s. per dollar, to £200 sterling), payable by instalments as follows:

£10	per bond	on application.
18	"	on allotment.
60	"	on 15th August, 1871.
60		on 1st of October, 1871.
£148		

890 Payments in anticipation of unpaid instalments may be made on allotment on either of the above dates, under discount, at the rate of five per cent. per annum.

Taking into account the discount on prepayment, the issue price of the bonds is reduced to about 73¼ per cent., upon which price they will return about 9½ per cent.

Applications in London must be made in the annexed form and lodged at Messrs. Glyn, Mills, Currie & Co., 67 Lombard st., London, E. C., with a deposit of £10 per bond of $1,000 applied for. Applications in Amsterdam must be made to Messrs. Lippman, Rosenthal and Co., and in Rotterdam to Messrs. H. C. Voorhoeve and Co.

Where no allotment is made the deposit will be returned in full.

In case a less number of bonds is allotted than is applied for, the surplus of the deposit will be applied in whole or in part, as the case may be, to the payment of the amount due on allotment.

In default of the payment of the respective installments at their due dates, all previous payments will be liable to forfeiture.

Scrip certificates to bearer will be issued in exchange for allotment letters as soon as possible, and will be exchanged for the definitive bonds as soon as possible after the issue price is paid up. Allotment
891 letters and scrip certificates issued respectively in London and Amsterdam can only be exchanged at the place of issue.

Copies of the acts of Congress and of the legislature of Minnesota, the mortgage of the extensions and lands, the agreement for lease, construction, and equipment of the extensions, and the definitive bond can be inspected by any intending subscriber at the office of Messrs. Bircham, Dalrymple, Drake and Co., 60 Threadneedle st., London, E. C., and at the offices of Messrs. Allcock and Milward, No. 5 Union st., Birmingham.

Prospectuses and forms of application may be obtained in Amsterdam at the offices of Messrs. Lippman, Rosenthal and Co., in Rotterdam at the offices of Messrs. H. C. Voorhoeve and Co., and in London at the offices of Messrs. Robert Benson and Co., 10 King's Arms Yard, Moorgate street, City, E. C., or Mr. W. H. Bishop, No. 1 Royal Exchange buildings, London, E. C.

8th July, 1871.

Ex. No. 2, Jan. 19, '77. E. D. Cowman [seal].

Form of application to be left at bankers with deposit and retained by them.

The First Division of the Saint Paul and Pacific Railroad Company.

Issue of $15,000,000 United States currency, or £3,000,000 sterling, seven per cent. first-mortgage extension bonds.

No. .

892 To the First Division of the St. Paul and Pacific Railway Company:

request that you will allot $1,000 seven per cent. first-mortgage bonds of your company, in accordance with the prospectus issued by you dated 8th July, 1871, upon which have paid Messrs. Glyn, Mills, Curry and Co. the deposit of pounds, being at the rate of £10 per bond, and engage to accept the said bonds, or any less number you may allot, and to make the remaining payments thereon in accordance with the prospectus.

Name at full length.

Address.

Date.

Banker's receipt to be retained by the applicant.

The First Division of the St. Paul and Pacific Railroad Company.

Issue of $15,000,000 United States currency, or £3,000,000 sterling, seven per cent. first-mortgage extension bonds.

No. .

Received this day of July, 1871, on account of Messrs. Robert Benson & Co., from , the sum of pounds, being a deposit made on an application for $1,000 bonds of the above issue, for Glyn, Mills, Currie and Co.

£ .

893 (Endorsed:) The First Division of the St. Paul and Pacific Railroad Company, Saint Vincent and Brainerd extensions. Issue of $15,000,000 United States currency, or £3,000,000 sterling, seven per cent. first-mortgage extension bonds. Prospectus.

First Division St. Paul and Pacific Railroad Company (St. Vincent and Brainerd extensions).

1871.				
Mai.	Ordre de paiement du 21 Avril, 1871	£100,000	0	0
Juin.	" " 29 Février, 1872, ancien order paiement regularisé	20,000	0	0

"	Ordre de paiement du 5 Juin, 1871.....	24,437	5 0
Juillet.	" " 14 Juin, "	6,180	0 0
"	" " 24 " "	16,830	0 0
"	" " 6 Juillet, 1871	9,120	0 0
Août.	" " 13 " "	31,405	10 8
"	Ed. Pelz, autorization générale de la compagnie	176	9 3
"	Ordre de paiement du 9 Août, 1871.....	20,000	0 0
Sept.	" " " " 31 Août, 1871.....	11,400	0 0
"	" " " " 2 Septembre, 1871....	3,615	0 0
Octobre.	" " " " 14 " "	8,300	0 0
Nov'bre.	24 Octobre, "	8,500	0 0
"	25 " "	20,671	0 0
"	Ed. Pelz, autorization générale de la compagnie.....	176	9 2
	À transporter..... £		

894 1871.

	À transporter..... £		
Déc.	Ordre de paiement du 25 Octobre, 1871.....	7,892	10 0
"	" " 25 " "	8,401	0 0
"	Commission sur paiement de coupon suivant convention	182	16 4
"	Paiement à Kloos, autorisé par Mr. Moorhead.	120	0 0
"	Ordre de paiement du 21 Novembre, 1871....	8,665	0 0
"	" " 1 Décembre, "	12,500	0 0
"	" " 1 " "	12,500	0 0
"	" " 22 Novembre, "	15,285	0 0
"	" " 6 " "	18,500	0 0
1872.			
Janvier.	" " 30 Octobre, "	4,135	2 4
"	" " 1 Décembre, "	12,500	0 0
"	" " 2 Novembre, "	8,096	18 0
"	" " 8 Novembre, "	4,028	15 0
"	"	12,500	0 0
"	"	12,500	0 0
"	" " 19 Décembre, "	12,500	0 0
"	"	12,500	0 0
Février.	Ed. Pelz, autorisation générale de la compagnie.....	176	9 3
"	Ordre de paiement (rails, Benson) du 9 Janvier, 1872, £34,000	31,759	16 4
"	Ordre de paiement (rails, Benson) du 9 Février, 1872, £34,000	6,117	13 5
895 "	Ordre de paiement (rails, Benson) du 9 Février, 1872, £34,000	£8,780	16 4
Mars.	Ordre de paiement du 27 Février, 1872.....	613	0 0
"	Paiement à Kloss, autorisé par Mr. Moorhead .	300	0 0
"	Ordre de paiement du 14 Mars, 1872.....	30,000	0 0
"	Ordre de paiement (rails, Benson) du 28 Février, 1872, £55,000	5,687	0 0
"	Ordre de paiement (rails, Benson) du 28 Février, 1872, £55,000	8,859	0 0
"	Ordre de paiement (rails, Benson) du 28 Février, 1872, £55,000.....	4,373	0 0
Avril.	Ordre de paiement (rails, Benson) du 28 Fé-		

	vrier, 1872, £55,000	12,293	0 0
"	Ordre de paiement du 15 Avril, 1872	25,000	0 0
Mai.	" " 16 Mars, "	40,000	0 0
"	" " 28 " "	20,671	0 0
"	Ordre de paiement (rails, Benson) du 28 Février, 1872, £55,000	4,163	16 9
"	Ordre de paiement du 15 Avril, 1872	12,500	0 0
"	Ordre de paiement (rails, Benson) du 3 Avril, 1872, £35,000	4,219	5 2
	À transporter £		

896 Ex. 3, Jan. 7, 19, '77.
E. D. COWMAN. [E. D. C.'S SEAL, N. Y. CO.]

Form 32. B'd 4301. 90 d's, Oct. 24, '72.

Warehouse entry for transportation in the United States.

NEW YORK, *Oct. 22d*, 1872.

Entry of merchandise imported by Wm. G. Moorhead, in ship Presto, master, from West Hartport, for warehouse and for transportation in bond to Duluth.

Remarks.	Nos.	Packages and contents.	Quantities.	Per cent.	Per cent.	Per cent.	Per cent.	Total.	Dutiable value of each package.
		Fourteen hundred and twenty-two bars R. R. iron	T 280 0 0 0	70 c. p.	100	less	10 %.	2,520 00	
		Comiss. 2½ %						63 00	
								£2,583 0 0	
		U. S. return	634,076 lb.					$12,499	

WM. G. MOORHEAD,
Per ALEX. P. FISKE, *Att'y.*

634,100,70 c.	$4,438 70
Less 10%	343 87
	$3,994 83

Union Transp't Co., consign'd to Wm. G. Moorhead Duluth.

CUSTOM-HOUSE, NEW YORK, *July* 7, 1873.
J. A. LACKEY.

COLLECTOR'S OFFICE,

I certify this to be a true copy from the original entry presented to me on entry, and now on file in this office.

WM. A. M., *D. Collector.*

897 DISTRICT AND PORT OF NEW YORK:

Consignee's, importer's, or agent's oath.

I, Alex. P. Fiske, do solemnly and truly swear that the invoice and bill of lading now produced by me to the collector of New York are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the Presto, whereof is master, from West Hartport, for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know nor believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise according to the said invoice and bill of lading; that nothing has been done on my part, nor to my knowledge on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time hereafter I discover any error in the said invoice or in the account now rendered of the same goods, wares, merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly swear that, to the best of my knowledge and belief,
898 the Aberdeen Iron Co. of London the owner or owners of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost or fair market value at London, June 20, '72, of the said goods, wares, and merchandise, all charges thereon, and no other or different discount, bounty, or drawback but such as has been actually allowed on the same.

ALEX. P. FISKE.

Sworn to, this 23 day of October, 1872, before me.

By B. F. WYMAN,
D. Collector.

Owner's oath.

I, , do solemnly and truly swear that the entry now delivered by me to the collecter of New York contains a just and true account of all the goods, wares, and merchandise imported by or consigned to , in the , whereof is master, from ; that the invoice which I now produce contains a just and faithful account of the actual cost of the said goods, wares, and merchandise, of all charges thereon, including charges of purchasing, carriages, bleaching, dyeing, dressing, finishing, putting up, and packing, and no other discount, drawback, or bounty but such as has
899 been actually allowed on the same; that I do not know nor believe in the existence of any invoice or bill of lading other than those now produced by me, and that they are in the state in which I actually received them; and that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made. And I do further solemnly and truly swear that I have not in the said entry or invoice concealed or

suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on said goods, wares, and merchandise; and that if at any time hereafter I discover any error in the said invoice or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice, I will immediately make the same known to the collector of this district.

Sworn to, this day of , 187 , before me.

, *Collector.*

DISTRICT OF NEW YORK, PORT OF NEW YORK,
Custom-House, , 187 .

To the surveyer of the port:

You will direct an inspector of the customs to examine the goods describe in the within entry, and if found to agree exactly therewith to superintend the lading thereof on board the master, for , of which, when completed, you will grant a certificate.

, *Collector.*

, *Naval Officer.*

PORT OF NEW YORK, , 187

I have examined the goods described in the within entry, and finding them to agree in all respects with the description thereof they have been laden, under my supervision, on board for transportation to . I further certify that a manifest of the same has been delivered to the master (or conductor, as the case may be).

, *Inspector of Customs.*

900 Ex. 4, Jan'y 19, '77.

E. D. COWMAN. [SEAL.]

Form 32. B'd 4302. 90 days, Oct. 24, '72.

Warehouse entry for transportation in the United States.

NEW YORK, *Oct. 22d*, 1872.

Entry of merchandise imported by Wm. G. Moorhead, in ship Familius Minde, master, from Port Talbot, Eng., for warehouse and for transportation in bond to Duluth.

Remarks.	Nos.	Packages and contents,	Quantities.	Per cent.	Per cent.	Per cent.	Total.	Dutiable value of each package.
				70 c.	less	10 %.		
		Ten hundred & fifteen bars R.	T. c. qr.					
		R. iron.....	200 0 0 0	.....	.....	.....	£1,600 0 0	
		Comiss. 2½ %..	.....	.....	.....	.....	40 0 0	
				.....	.....	.....	£1,640 0 0	
		U. S. return....	447,937 lb.	.....	.....	.....	$7,937	

WM. G. MOORHEAD,
Per ALEX. P. FISKE, *Att'y.*

447,900,70c. $3,035 30
Less 303 53

$2,821 77

Union Transp't Co., consig'd to W. G Moorhead Duluth.

CUSTOM-HOUSE, NEW YORK, *July* 7, 1873.
J. A. LACKEY.

COLLECTOR'S OFFICE.

I certify this to be a true copy from the original entry, presented to me on entry, and now on file in this office.

WM. A. M., *D. Collector.*

901 DISTRICT AND PORT OF NEW YORK:

Consignee's, importer's, or agent's oath.

I, Alex. P. Fiske, do solemnly and truly swear that the invoice and bill of lading now produced by me to the collector of New York are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the Familius Minde, whereof is master, from Port Talbot, for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know nor believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just & true account of the said goods, wares, and merchandise according to the said invoice and bill of lading; that nothing has been done on my part, nor to my knowledge on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time hereafter I discover any error in the said invoice or in the account now rendered of the same goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly swear that, to the best of my knowledge and belief, the Gov't and Comp'y of Copper Mines of Eng. the owner or owners of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost or fair market value at London, July 8, '72, of the
902 said goods, wares, and merchandise, all charges thereon, and no other or different discount, bounty, or drawback but such as has been actually allowed on the same.

ALEX. P. FISKE.

Sworn to, this 23 day of Oct., 1872, before me.
(Sig'd) B. F. WYMAN,
D. Collector.

Owner's oath.

I, , do solemnly and truly swear that the entry now delivered by me to the collector of New York contains a just and true account

of all the goods, wares, and merchandise imported by or consigned to , in the , whereof is master, from ; that the invoice which I now produce contains a just and faithful account of the actual cost of the said goods, wares, and merchandise, of all charges thereon, including charges of purchasing, carriages, bleaching, dyeing, dressing, finishing, putting up, and packing, and no other discount, drawback, or bounty but such as has been actually allowed on the same; and that I do not know nor believe in the existence of any invoice or bill of lading other than those now produced by me, and that they are in the state in which I actually received them; and that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made; and I do further solemnly and truly swear that I have not in the
903 said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on said goods, wares, and merchandise; and that if, at any time hereafter, I discover any error in the said invoice or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice, I will immediately make the same known to the collector of this district.

Sworn to, this day of , 187 , before me.

, *Collector.*

DISTRICT OF NEW YORK, PORT OF NEW YORK,
Custom-House, Oct. 22d, 1872.

To the Surveyor of the Port:

You will direct an inspector of the customs to examine the goods described in the within entry, and if found to agree exactly therewith to superintend the lading thereof on board the Union Transf'r Co., master, for Duluth, of which, when completed, you will grant a certificate.

, *Collector.*

, *Naval Officer.*

PORT OF NEW YORK, 187 .

I have examined the goods described in the within entry, and finding them to agree in all respects with the description thereof they have been laden, under my supervision, on board , for transportation to .

I further certify that a manifest of the same has been delivered to the master (or conductor, as the case may be).

, *Inspector of Customs.*

904 Ex. 5, Jan'y 19, '77.
E. D. COWMAN. [E. D. C.'S NOT. SEAL N. Y., CO.]

Form 32. B'd 4304. 60 d's, Oct. 24, '72.

Warehouse entry for transportation in the United States

NEW YORK, *Oct. 22d*, 1872.

Entry of merchandise imported by Wm. G. Moorhead, in ship Nancy M., master, from Cardiff, for warehouse and transportation in bond to Duluth.

Remarks.	Nos.	Packages and contents.	Quantities.	Per cent.	Per cent.	Per cent.	Per cent.	Total.	Dutiable value of each package.
		Twenty-nine hundred and eighty-nine bars R. R. iron	T. c. q. lb. 579 12 2 7		70 c. pr. less.	100 lb 10 %...		6,043,14 8	
		Comiss. 2½%						151, 1 3	
		W. T. M.	1,320,772 lb.					£6,194,14 11	
								$29,968	

W. G. MOORHEAD,
Pr. ALEX. P. FISKE, *Att'y.*

1,320,800, 70c..... 9,245 60
924 65

$8,321 04

Union Transp't Co., consig'd to Wm. G. Moorhead, Duluth.

CUSTOM-HOUSE, NEW YORK, *July* 7, 1873.
J. A. LACKEY.

COLLECTOR'S OFFICE.

I certify this to be a true copy from the original entry presented to me on entry, and now on file in this office.

WM. A. M., *D. Collector.*

905 DISTRICT AND PORT OF NEW YORK:

Consignee's, importer's, or agent's oath.

I, Alex. P. Fiske, do solemnly and truly swear that the invoice and bill of lading now produced by me to the collector of New York are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the Nancy M., whereof is master, from Cardiff, for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know nor believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise according to the said invoice and bill of lading; that nothing has been done on my part, nor to my

knowledge on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time hereafter I discover any error in the said invoice, or in the account now rendered of the same goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly swear that, to the best of my knowledge and belief, Guest and Co., of London the owner or owners of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost or fair market value at London, June 1st, 1272, of the said goods, wares, and merchandise, all charges thereon, and no other or different discount, bounty, or drawback but
906 such as has been actually allowed on the same.

ALEX. P. FISKE.

Sworn to, this 23d day of October, 1872, before me.

(S'g.) B. F. WYMAN,
Collector.

Owner's Oath.

I, , do solemnly and truly swear that the entry now delivered by me to the collector of New York contains a just and true account of all the goods, wares, and merchandise imported by or consigned to , in the , whereof is master, from ; that the invoice which I now produce contains a just and faithful account of the actual cost of the said goods, wares, and merchandise, of all charges thereon, including charges of purchasing, carriages, bleaching, dyeing, dressing, finishing, putting up, and packing, and no other discount, drawback, or bounty but such as has been actually allowed on the same; and that I do not know nor believe in the existence of any invoice or bill of lading other than those now produced by me, and that they are in the state in which I actually received them; and that the said invoice and the declaration therein are in all respects true and were made by the person by whom the same purport to have been made. And I do further solemnly and truly swear that I have not in the said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any of the duty lawfully due on said
907 goods, wares, and merchandise; and that if at any time hereafter I discover any error in the said invoice or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice, I will immediately make the same known to the collector of this district.

Sworn to, this day of , 187 , before me.

, *Collector.*

DISTRICT OF NEW YORK, PORT OF NEW YORK,
Custom-House, Oct. 23d, 1872.

To the surveyor of the port:

You will direct an inspector of the customs to examine the goods described in the within entry, and if found to agree exactly therewith to superintend the lading thereof on board the Union Transfer Co.,

master, for Duluth, of which, when completed, you will grant a certificate.

, *Collector.*

, *Naval Officer.*

PORT OF NEW YORK, , 187 .

I have examined the goods described in the within entry, and finding them to agree in all respects with the description thereof they have been laden, under my supervision, on board for transportation to .

I further certify that a manifest of the same has been delivered to the master (or conductor, as the case may be).

, *Inspector of Customs.*

908 Supreme Court of the United States.

JESSE P. FARLEY, RECEIVER,
vs.
CHARLES A. DEGRAFF, WILLIAM CROOKS, and Nicholas DeGraff, partners as DeGraff & Co., The Northern Pacific Railroad Company, The Lake Superior & Mississippi Railroad Company, B. S. Russell, G. W. Cass, receiver of the Northern Pacific Railroad Company, and C. W. Mead, general manager of the Northern Pacific Railroad Company, Jacob S. Wetmore, Thomas W. Pearsall, & Thomas W. Denny, trustees, and Edwin M. Lewis, trustee in bankruptcy of William G. Moorhead and others.

Know all men by these presents that we, B. S. Russell, of the city of Philadelphia, Pennsylvania, by James Smith, jr., his attorney in fact, as principal, and Charles N. Nelson, of Stillwater, in the county of Washington, and Robert A. Smith, of the city of Saint Paul, county of Ramsey, and State of Minnesota, as sureties, are held and firmly bound unto
Jesse P. Farley, receiver, plaintiff in the above-entitled action,
909 in the sum of five hundred dollars, to be paid to the said Jesse P. Farley, receiver, his executors, administrators, or successors, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this fifth day of January, A. D. 1878.

Whereas the above-named B. S. Russell has taken an appeal to the Supreme Court of the United States to revise that portion of the decree rendered in the above-entitled action by the circuit court of the United States for the district of Minnesota, which portion of said decree provides that the appellant, the defendant Russell, is not entitled to costs or damages, and from which an appeal in the premises has been allowed by said court upon the said appellant giving bond in the sum of five hundred dollars, as in and by said decree will more fully and at large appear:

Now, therefore, the condition of this obligation is such that if the above-named B. F. Russell, appellant aforesaid, shall prosecute his said appeal to effect, and answer all costs if he shall fail to make good his

plea, then this obligation to be void, otherwise to remain in full force and virtue.

B. S. RUSSELL, [SEAL.]
By JAS. SMITH, JR.,
His Att'y in Fact.

910 ROBERT A. SMITH. [SEAL.]
CHAS. N. NELSON. [SEAL.]

Sealed and delivered in presence of—
ALBERT SCHEFFER,
JOHN AHERN.

STATE OF MINNESOTA,
District of Minnesota, ss:

Robert A. Smith and Charles N. Nelson, the sureties above named, being each duly sworn, deposes that he is a resident freeholder of said district; is worth one thousand dollars and more, over and above his debts, in property not exempt from execution.

ROBERT A. SMITH.
CHAS. N. NELSON.

Sworn to and subscribed before me, this 5th day of January, A. D. 1878.

[NOTARIAL SEAL.] ALBERT SCHEFFER,
Notary Public, Ramsey County, Minn.

911 (Indorsed:) Sup. Court U. S. Jesse P. Farley, receiver, vs. C. A. DeGraff et al. Appeal bond. Approved & appeal allowed. R. R. Nelson, judge. Filed January 5, 1878. H. E. Mann, clerk.

912 UNITED STATES OF AMERICA,
Circuit Court of the United States,
District of Minnesota, ss:

I, H. E. Mann, clerk of said circuit court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing, consisting of 911 pages, numbered consecutively from 1 to 911, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree, and all other proceedings in said cause, and of the whole thereof, as appears from the original records and files of said court.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 9th day of October, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred *one hundred* & third year.

[SEAL.] H. E. MANN, *Clerk.*

(Indorsement on cover:) No. 168. B. S. Russell, appellant, vs. Jesse P. Farley, receiver of the St. Paul & Pacific Railroad Company. Minnesota C. C. U. S. Filed 12th March, 1879.

REC. 168—25

No. 168.

In the Supreme Court of the United States.

B. S. RUSSELL

vs.

J. P. FARLEY, Receiver, etc.

ADDITIONAL BRIEF OF ARGUMENT FOR APPELLANT.

R. L. ASHHURST,
Of Counsel.

Allen, Lane & Scott, Printers, 229-231 South Fifth Street, Philadelphia.

Second.—Because the order was contrary to equity, and practically had the effect of taking the greater part of the value of appellant's property, and depriving him of all redress or compensation for it.

First.—As to the matter of jurisdiction: The court undoubtedly have jurisdiction in dismissing a bill—which was what they practically did here—to make such order as they see fit as to the costs, and if it deems that the plaintiff had probable cause to file his bill, may, it is conceded, decree that neither party shall be entitled to costs from the other; but the learned judge was misled by a false analogy when he thought he had jurisdiction to make a like order as to damages, no matter what good apparent cause for proceeding he thought the plaintiff had. The matter of damages is a right the defendant had acquired by the bond given; the dismissal of the bill and dissolution of the injunctions fixed the appellant's right of action on the bond, and the decree that he was not entitled to damages was a usurpation of the functions of a jury, in an action on the bond, who alone could find the question of fact whether the appellant had sustained damages or not. If he had sustained damages—*ipso facto*, by the terms of the bond, and the dissolution of the injunction, his right of action for whatever damages he had sustained was perfected, and the only question was had he sustained damages, and how much?

Over this question the court of equity had no jurisdiction. This would seem perfectly clear on principle—it is also well established, we think, by authority. Phelps *vs.* Foster, 18 Illinois, 309, has a full discussion of the question, concluding that the power of a court of equity, there being no cross-bill, was limited to a dismissal of the bill, and could not give damages to the defendant.

In the last edition of High on Injunctions, section 1567, Ed. 1880, the law is thus stated:—

"The practice and modes of procedure to which resort

is had for ascertaining and assessing damages upon injunction bonds, after a dissolution, vary largely in the different States, being generally regulated by express legislation or by local rules of practice. In some of the States, as will be hereafter shown, an expeditious and summary method of procedure has been provided by legislation for determining the damages upon motion or suggestion in the injunction suit, and without the necessity of resorting to an original and independent action on the bond. There has been much conflict of authority whether, in the absence of express legislation, a court of general equity powers might, upon dissolving an injunction, ascertain by reference, or otherwise, the amount of damages sustained by the injunction and decree payment of such amount without a new suit for that purpose. But while courts of much respectability have insisted upon the exercise of such a jurisdiction, treating it as a cumulative remedy, entirely independent of and distinct from any action which might be brought upon the bond, the undoubted weight, both of authority and principle, is against the exercise of such a jurisdiction. It is certain that no warrant can be found for its exercise in the former practice of the English High Court of Chancery, and however desirable and convenient such procedure may be and undoubtedly is in practice, the doctrine is too firmly fixed to admit of controversy, that in the absence of positive legislation a court of equity has no power to afford a remedy upon the bond in the injunction suit, such a power being neither an incident to the general powers of courts of equity, nor consistent with the principles of equity jurisdiction. In the absence, therefore, of legislative authority to the contrary, a court of equity will not, upon dissolving an injunction, enforce payment of damages in the original cause, but will remit the parties aggrieved to their action upon the bond."

If the court can not give, it follows, *ex necessitate*, it can not refuse.

In Merryfield *vs.* Jones, 2 Curtis C. C. R., 306, the Circuit Court held the same doctrine, and laid down the rule that no court, proceeding according to the rules of equity, could give judgment against the obligors in an injunction bond; that this was inherent in the nature of courts of equity, and must be the rule notwithstanding the practice in the State courts may be otherwise.

And Mr. Justice Curtis in that case, while he insists that no legislation gives any such power to the Federal courts of equity, expresses great doubt whether any legislation could give them such power, as such a provision would be probably in violation of the constitutional requirement that the right of trial by jury should not be infringed.

In *Gracie* vs. *Sheldon*, 3 Barbour (N. Y.), 232, an injunction was granted and then dissolved finally. Motion was made by defendant for reference to ascertain damages. Upon a motion to set aside order it was said by Sill, J., "We are of opinion * * * that the rules of the court of chancery, and of the present court, require a clause to be inserted in the condition of the bond itself, consenting that the damages shall be summarily ascertained upon a reference. * * * We are not aware that such practice has ever been pursued, or the right to it claimed, when the clause was omitted. Had the object of the rule been such as the defendants' counsel contends, it would not change our views of the case; *for we deny the power of the court to substitute by rule a summary proceeding of its own in the place of the admitted common law remedy upon obligations of this description.* The rights and liabilities of the parties under the bond are cognizable in courts of common law, and the plaintiff and his sureties are entitled to have them determined in and according to the rules and practice of those courts.

"The fact that the bond has grown out of a suit in equity makes no difference. It is the character of the obligation and the remedies claimed upon it, and not the circumstances

out of which it originated, which must determine the question of jurisdiction and the court in which redress is to be sought." Page 235.

In the case of *Lawton* vs. *Green* (1871), 64 N. Y., 326, damages were awarded under section 222 of the Code, and this section was strictly construed.

It was said in that case, "The reference was had in pursuance of section 222 of the Code. * * * This proceeding constituted no part of the action. The section of the Code referred to was adopted as a substitute of the thirty-first rule of the Court of Chancery. Until that rule was adopted, the court had no power to award damages against a party for an injury occasioned by an injunction, even though it was determined in the action that the party was not entitled to it." It was held in this case that the court, notwithstanding this legislation allowing a reference, could not award greater damages than the amount of the bond, and that payment of them could only be enforced by an action upon the bond.

In Taylor *et al. vs.* Brownfield, 41 Iowa, 264, an injunction was first granted and then dissolved, and damages were awarded by a judgment rendered against plaintiffs on motion of defendants. It was held on appeal from this order and judgment that, in the absence of affirmative legislation, the court had no power to assess damages in a summary way. Consequential damages could only be recovered by an ordinary action as in other cases.

And this court has adopted the principle to the fullest extent in Bein *vs.* Heath, 12 Howard, 168, expressly holding that the courts of equity of the United States would not recognize the doctrine of the assessment of damages on an injunction bond in the suit in equity.

And this though the result of the decision was to render the bond nugatory. In that case, unlike the present, the condition of the bond was for such damages as defendant should ~~become~~ recover; here it is for such as he sustains, so there

is no difficulty in the way of an action on the bond by reason of its form.

If there can be no judgment for such damages there can of course *e converso*, be none against the right thereto.

This is expressly decided in the recent New Jersey case of Easton *vs.* Railroad Company, 11 C. E. Green, 360.

The vice-chancellor in deciding that case says: "It is contended that the question of liability on the bond is purely a matter of common law cognizance, and a court of equity can not acquire jurisdiction of it except by the consent of the obligors expressed in the bond, or in some other appropriate mode. This view would seem to have the support of two adjudications entitled to great respect, (citing Bein *vs.* Heath and Merryfield *vs.* Jones, *supra*). The question whether the condition of the bond in this case has been *broken or not* must be left to the judgment of the court in which the action on it is to be instituted.

The long series of cases in those States where the distinctions between legal and equitable proceedings are abolished, and such assessments are authorized by statute, has no relevance here. It is true that appellant in his answer filed in the State Court, where this suit was brought, prayed for an ascertainment of damages according to the practice of that court by the plaintiff below, but by the removal of the cause to the Circuit Court, the forum and its laws were changed, and the bond is perfectly apt in its terms for the maintenance of a common law action thereon. Nor could consent give the court below jurisdiction.

Section 185, Revised Statutes, Minnesota, prescribes that injunction bonds shall be given conditioned to pay the damages the defendant sustains; and then adds that these damages may be ascertained by a referee or otherwise, as the court shall order. The effect of the certificate was therefore to simply do away with the possibility of applying this clause, leaving the bond in full vigor.

Second.—It is further very clear that the order denying the appellant damages and costs was erroneous and contrary to equity.

The injunction issued June 22d, 1875, and was dissolved October 13th, 1877. For two years and four months, therefore, by reason of the injunctions, the appellant, for those he represented was deprived of the power of selling the property. By his answer filed in July, 1875, page 16, record, he set up his title for the Secretary of the Navy. In 1860 tons, he claimed in one month a depreciation of ten dollars per ton, and the ultimate depreciation was much greater. Of the iron held by the injunction, all was claimed by the appellant, or by D[illegible] Graff & Co., for the Secretary of the Navy.

The decree expressly recognizes both these claims as valid, and decreed that the appellee had no claim against the lien thus transferred to either D[illegible] Graff & Co., or to the United States, but then the court went on to make a decree that ~~said~~ supposed quantity of the ~~iron~~ not so transferred was subject to the plaintiff's equity, and made a decree in his favor as to that, and gave him costs, and refused the appellant damages for the detention of the property, which admittedly was his for his constituents. The court did not decide what portion of the ~~iron~~ this was, which the plaintiff was entitled to, but referred that question to a Master.

It would be hard to find from the evidence what, if any, iron would be appropriately covered by these provisions of the decree, but at the very least it was quite that, as to the 1069 tons, part of the 1860 claimed by appellant for the United States, the title was admittedly perfect, and the ear-marking and tracing complete, ~~which~~ as to the remaining 800 tons or thereabouts, there was some possible question as to the tracing and ear-marking of it.

Now as to this 1069 tons, if no more; the appellants claim of title for the Navy Department was sustained and

recognized. The damages in this case represent the greater part of the value of the property. The court might just as well, in a case where the property had been strictly perishable and destroyed, made an order refusing damages for its unjust detention which would represent its whole value. Here, according to the testimony, more than half the value of the property was just as much obliterated as if the iron had been sunk in Lake Superior.

What possible reason could any reasonable cause for proceeding on the plaintiff's part, or any virtue in his position, however great, be for exempting him and his securities from compensating the appellant for the absolute loss sustained?

This is not a case where damages might be only punitive or by way of penalty; here they represent only compensation. Courts, it has been held, may in many cases give a large measure of damages, so as to include counsel fees in procuring dissolution, percentage, or judgments enjoined from enforcement, &c. (Cases cited, High on Injunctions, sections 962 and 969, note.) But has it ever before been attempted to be decided that the court can deprive defendants of compensation for his loss by depreciation, &c.

The cases of Meysenberg *vs.* Schlieper, 48 Mo., 426; Kennedy *vs.* Hammond, 16 Mo., 341; and St. Louis *vs.* Alexander, 23 Mo., 483, are express authorities that in all such cases the actual injury from depreciation, loss of sale, expense, &c., should be allowed as damages.

If the defendant had a vested legal right in the property as the decree establishes, equity can no more suspend than it could take away his right.

It has been expressly held, in case of the dissolution of an injunction to enjoin the collection of a judgment, that the obligors can not defend on the ground that complainant had sufficient equitable grounds for obtaining his injunction.

Hughes *vs.* Wickliffe, 11 B. Monroe, 202;
Hunt *vs.* Scolie, 6 B. Monroe, 469.

The right of a vested ownership of personalty is at least as strong as that of a creditor holding a judgment.

In Mahan *vs.* Tidings, 10 B. Mon., 351, it was held that the mere suspension and delay are sufficient consideration for bond.

And in White *vs.* Clay, 7 Leigh, 68, that the condition of the bond is broken even by a partial dissolution of the injunction.

And in Dowling *vs.* Black, 18 Cal., 625, that in an action on bond the court can not examine the grounds of injunction or propriety of its issue. If the court after dismission has any jurisdiction of the question of damages on the bond, could it do more than a court of law could do in an action upon it?

In Minnesota the right to a bond is a statutory right given by the legislature, so that without a bond no injunction could have issued.

The injunction bond, it is prescribed, shall be as those in the present case were, for the damages defendant shall sustain (not those he may recover), and the action of the court below was to divest him of his vested right in a bond which had been given him under the statutes.

To meet a possible technical objection, we may add that the United States is not bound to appear and take the part of a litigant where its rights are assailed by a suit against its officers or agents. It may assert its rights through its officer or agent, and by an appeal in his name reverse an erroneous decree against its rights. This was the course successfully adopted in Eyster *vs.* The Centennial Board of Finance, 4 Otto, 500.

R. L. ASHHURST,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM.—No. 168.

B. S. RUSSELL,

Appellant,

vs.

JESSE P. FARLEY, RECEIVER OF THE ST. PAUL AND PACIFIC RAILROAD COMPANY,

BRIEF FOR APPELLANT.

RICHARD L. ASHHURST,
THOMAS H. HUBBARD,
Counsel for Appellant.

Supreme Court of the United States.

B. S. RUSSELL,
Appellant,

vs.

JESSE P. FARLEY, RECEIVER OF THE SAINT PAUL AND PACIFIC RAILROAD COMPANY.

No. 168.

BRIEF FOR APPELLANT.

Appeal from the Circuit Court of the United States for the District of Minnesota.

STATEMENT.

The appeal is from a decree made October 13, 1877, by the Circuit Court of the United States in the Minnesota District, the Hon. John F. Dillon being Judge (*p.* 77 *of transcript*).

The appeal was allowed by the decree (*p.* 78).

The appeal bond recites that the appeal is taken to revise that portion of the decree which provides that the appellant, Russell, is not entitled to costs or damages (*p.* 384), and the appellant's argument will be confined to that question.

The cause was originally brought in the State Court, but was removed to the U. S. Circuit, as stated below.

Farley, the respondent, had been appointed, August 1, 1873, Receiver of certain lines of railroad belonging to the Saint Paul and Pacific Railroad Company (*pp.* 7–11 ; *also,* 11, 12).

The orders appointing him were made in a suit brought in the United States Circuit Court for the District of Minnesota, by John S. Kennedy and others against said railroad company and others.

In June, 1875, Farley, as such Receiver, brought this action in the District Court for the County of Ramsey, Second Judicial District, and State of Minnosota, against the appellant, B. S. Russell, and others, to obtain 4,560 tons of railroad iron in their possession, which Farley alleged he, as Receiver, was entitled to.

The action was in substance a proceeding in equity, and the plaintiff, in his complaint, alleged that Russell held 1,860 tons of the iron he claimed, and that the remainder, 2,700 tons, was in the possession of DeGraff & Co., who were also defendants in the cause. The plaintiff prayed that various transfers of the iron in the control of Russell and of De Graff & Co. should be declared void, and that an injunction might issue restraining the said defendants from selling, moving, or interfering with the iron (*pp.* 2–7).

On the 22d June, 1875, such an injunction issued out of the State Court, and was served on the defendants before they filed their answers (*pp.* 32, 34). As a condition of obtaining the injunction a bond was given on the 22d June, 1875, on behalf of the said plaintiff Farley, in the sum of ten thousand dollars, conditioned that the plaintiff (Farley) should "*pay the parties enjoined by such writ or detained thereby, such damages as they or either or any of them may sustain by reason of the writ, if the court finally decide that the party was not entitled thereto.*"

The statute of Minnesota is imperative in directing that the court, allowing a writ of injunction, shall require a bond conditioned as above.

Statutes of Minnesota, Ed. 1873, p. 806.

On the 13th of July, 1875, Russell filed in the State Court his answer to Farley's complaint.

In this answer he set out that the 1,860 tons of iron claimed from him by the plaintiff belonged to the United States, by reason of a transfer that had been made to the Secretary of the Navy; that the defendant Russell was agent of the United States and, as such agent, was about to ship 1,060 tons of the iron to carry out a sale that had been made, and that said sale had been, or would shortly be, broken up by the injunction if continued.

He further alleged that the injunction bond filed was inadequate; prayed that an additional bond be required, that the injunction be vacated, and that his damages be ascertained as authorized by the law and practice of the court (*pp.* 16, 17).

On the 4th of August, 1875, the defendants DeGraff & Co., from whom Farley claimed the 2,700 tons of iron, procured 1,000 tons thereof to be released from the injunction (*pp.* 28, 29), thus leaving in their possession 1,700 tons, and in possession of Russell 1,860 tons claimed by Farley.

On the 11th of August, 1875, in pursuance of an order of the State Court making it a condition for the continuance of the injunction, a further bond was given by the plaintiff and sureties in the sum of seventy-nine thousand dollars, conditioned, like the first injunction bond, to "*pay the parties enjoined by such injunction, or detained thereby, such damages as they or either or any of them may sustain by reason of such injunction, if the court finally decide that the party was not entitled thereto.*" (*p.* 31).

In February, 1876, the plaintiff filed a reply to Russell's answer (*pp.* 26, 27).

On the 1st of March, 1876, the suit was, on the petition of Farley, removed from the State Court to the United States Circuit Court for the District of Minnesota (*pp.* 45, 46).

A mass of evidence was received in the progress of the cause, and appears in the transcript, bearing more or less directly upon the various issues.

But the gist of what relates to the question now before the court is as follows:

The iron in controversy was bought in Great Britain with the proceeds of certain bonds issued by the First Division of the Saint Paul and Pacific Railroad Company, and for the purpose of being used in the construction of the lines of the Saint Paul and Pacific Railroad Company, which afterwards passed under the

control of Farley, as Receiver (*p.* 107). The First Division of the Saint Paul and Pacific Railroad Company and the Saint Paul and Pacific Railroad Company, were two distinct corporations. The former had agreed to issue its own bonds to procure funds for the construction of the lines of the latter, of which it also had a long lease; and the latter agreed to secure the bonds by a mortgage of all its property (*pp.* 47–74).

At the time referred to, the Northern Pacific Railroad Company owned a controlling interest in the stock of the said First Division Company (*p.* 112, *fol.* 304).

A firm of Dutch bankers, at Amsterdam, who had acted as financial agents for the Saint Paul companies, had possession of all the bonds mentioned above, and undertook to sell them and remit the proceeds (*p.* 106).

The iron referred to was shipped from Great Britain to New York, consigned to William G. Moorhead, who was one of three trustees to whom the Saint Paul and Pacific Railroad Company had made the mortgage to secure the payment of said bonds of the First Division Company. Moorhead was also a construction agent, and nominally a contractor to build the lines of railroad mentioned (*pp.* 70, 167, 175, 176).

But he had consented to take that position at the request of the foreign holders of the bonds and of the Northern Pacific Railroad Company and of the said First Division Company.

He had no personal or private interest whatever in the construction, or in the profits resulting from the contract, should there be any.

His position was, in fact, that of a general superintendent, overlooking and forwarding the work of construction at the request and for the benefit of the several interested parties mentioned above (*pp.* 114, 127, 147, 160, 163, 165, 167, 175, 176–179, 348).

In the summer of 1872 the sale of bonds, or remittances from their proceeds, had ceased, but, under assurances that they would soon be resumed, the work of construction was pushed forward, and a large indebtedness accumulated (*pp.* 107, 140, 132, 202–214).

The consequence was that in the fall of 1872 De Graff & Co., the contractors in the immediate charge of the work, had large claims for arrears due them on their construction contracts, an

army of laborers was clamoring for pay, and a riot and a consequent destruction of the company's property was imminent (*p.* 140, *fol.* 353; *p.* 148, *fol.* 375; *p.* 352, *fol.* 836).

Moreover, a stoppage of the work of construction would hazard the loss of a valuable land grant, which was largely relied upon to make good the outstanding bonds and to ensure the ultimate success of the enterprise (*p.* 121, 366-369).

Moorhead, who had, at the request of the parties aforesaid, disbursed the proceeds of the bonds, had applied to the payment of construction all the moneys he had received, and had also made large advances from his own private means to keep the work in progress, while remittances from the sales of bonds lagged (*pp.* 107, 140, *fol.* 375).

He had now no assets available for construction, save certain importations of the railroad iron which had not been laid in track or distributed along the company's line, and for which the road bed was not ready.

Under these circumstances, in the fall of 1872 and the spring of 1873, and before the commencement of any of the litigations before mentioned, he disposed of certain of said railroad iron to relieve the Saint Paul Company from its dangerous embarrassments.

This he did at the urgent request of the contractors, and by virtue of a resolution of the First Division of the Saint Paul and Pacific Company, specially authorizing him so to do (*p.* 178).

To De Graff & Co., the contractors in immediate charge of the work, he turned over the 2,700 tons of iron afterwards claimed by the receiver Farley.

Besides this, he sold and pledged large quantities of iron to various parties, to raise money for the payment of workmen and other claims that could not be postponed (149, 309-310, 321, 323).

Every dollar of the money thus raised was applied by Moorhead for the company's benefit, and to pay its debts incurred in constructing said lines (*pp.* 107, 306).

Of the iron thus sold and pledged 1,069 tons were at Duluth in the possession of defendant Russell when this action was commenced. It had previously been transported in bond from New York to Duluth, consigned to Russell, and he had there taken control of and receipted for it; had re-warehoused

it, and given the bond required by law on re-warehousing (*pp.* 239, 252–274).

Russell acted as agent or representative of Moorhead, and of the various parties entitled to the iron under the transfers from him (*pp.* 16, 143).

The transfers had been as follows:

In the fall of 1872, Moorhead had pledged this with other iron to the firm of Jay Cooke & Co., of which he was a member, and from which he obtained large loans for said Saint Paul and Pacific Railroad Company (*pp.* 300, 306).

Afterwards, in the spring of 1873, part of said iron, including the 1,069 tons, had been pledged to Jay Cooke, McCulloch & Co., the London correspondents of Jay Cooke & Co. (*pp.* 307, 313, *fols.* 742, 322, 324).

In the fall of 1873, the firm of Jay Cooke, McCulloch & Co. pledged the 1,069 tons to the United States, as security for sums due from the firm last mentioned to the United States Navy Department (*pp.* 326, 332, 343).

In the fall of 1876, the debt to the Navy Department was finally paid by Jay Cooke, McCulloch & Co., and at their request, the 1,069 tons of iron was transferred by the Secretary of the Navy to the firm of Williams, Deacon & Co., bankers, of London, who had loaned Jay Cooke, McCulloch & Co. a large part of the money used to pay the navy claim (*pp.* 328, 330, 331, 335, 337, 338, 339, 342).

Thus, it will be observed that, when the injunction issued, De Graff & Co. held, under transfers from Moorhead, 2,700 tons of the iron enjoined, while Russell, as agent and consignee, held 1,860 tons; that of the 1,860 tons, 1,069 tons had, through various transfers from Moorhead, been pledged to the Navy Department, and, when the decree was made, had come into the possession of Williams, Deacon & Co., and that, from the beginning to the end of this litigation, Jay Cooke, McCulloch & Co., or, in other words, Mr. McCulloch, Mr. Puleston and Mr. Evans, and Mr. Lewis, the trustee in bankruptcy of the firm of Jay Cooke & Co., were the parties really suffering by the injunction, since they were the parties who owed and paid the debt to the United States, as security for which the iron was pledged (*p.* 328, *fol.* 781, and *pp.* 336, 337); and they were the parties who were finally obliged to let the iron go to

Williams, Deacon & Co. in order to obtain the money to pay the United States.

When this suit was begun both the plaintiff and the defendant Russell were under the impression, as their pleadings show, that all of the 1,860 tons held by the latter had been pledged or sold by Moorhead.

But the proofs showed that this was true only of 1,069 tons. This is made plain by comparing the testimony relating to the sales, pledges and transfers (*pp.* 306, 307, 321, 322, 324, 326, 332, 343) with the testimony of Mr. Selby, the Collector of Customs at Duluth (*p.* 239, 252 *et seq*).

It appears from the testimony first referred to that the pledged iron held by Russell at Duluth consisted of parts of cargoes imported by the vessels *Familius Minde*, *Nancy M.* and *Presto*, while Mr. Selby's testimony shows that the iron held by Russell in excess of the 1,069 tons was imported by the vessels *Mary Loweriser* (*p.* 253) *and Lidskgolf* (*p.* 255) whose cargoes do not appear ever to have been disposed of by Moorhead.

The decree of the court, therefore, was in effect, and so far as it related to the title and right of possession to the iron, that Farley was not entitled to any of it that Moorhead had sold, pledged or transferred, but was entitled to so much of the importations by Moorhead, as construction agent or contractor, as he had never disposed of.

There was evidence in the case to show that the injunction had caused great damage by breaking up a sale of the iron, and by preventing any sale while the market price of iron was greatly depreciated, and various expenses were accumulating (*pp.* 317–319, 324, 328).

Assignment of Errors.

1st. The Circuit Court erred in decreeing (fol. 220) "that neither the plaintiff nor the defendant Russell is entitled to costs or damages herein."

2d. The Circuit Court erred in making any decree on the subject of damages.

POINTS.

First.—When the second and principal injunction bond was given (p. 31), Russell had already filed his answer (pp. 13–17), and had stated his interest, the capacity in which he held the iron, and the damage that the injunction was causing. The bond was given as a condition for the continuance of the injunction, and in view of all the facts then disclosed to the court.

The bond was in effect a covenant that the obligors would pay to Russell, for the parties he represented, such damages as should be caused by the injunction, if the court in which the action was pending should decide that the plaintiff was not entitled thereto.

The defendant Russell, and the parties he represented, thus acquired an interest in the bond and a right to be secured by it, of which they could not be deprived, unless it should turn out, *first*, that the plaintiff was entitled to the injunction; or *second* that, no damage had been sustained by reason of the injunction.

Second.—It was the province of the court to determine by its decree in the cause pending before it, whether the plaintiff was entitled to the injunction; but having determined that he was not so entitled, a right of action immediately accrued in favor of the defendants against the obligors in the bond, and that right could not be extinguished by the court, without an adjudication in some regular proceeding between the said defendants and the obligors.

It is manifest that the decree would have been wrong, had it in terms adjudged that the plaintiff was not entitled to the injunction, and that the obligors in the bond should not pay to the defendants such damages as they had sustained thereby.

(*a.*) Such a decree would have been inconsistent in its parts.

(*b.*) It would, in effect, have cancelled the injunction bond

without having an adjudicating between the the parties to it.

The sureties to the bond were not parties to the suit.

The court had no power by its decree, to render judgment *against* the sureties.

And it must follow that there was no power to render a decree *in their favor*, without some further proceeding.

See Lexington and Ohio R. R. Co. *vs.* Applegate, 8 Dana (Ky.), 289, p. 310.

Easton *vs.* Railroad Co., 11, C. E. Green (26 N. J. Eq.), 360.

Third.—But the effect of the decree is precisely that of a decree, that the plaintiff is not entitled to his injunction, but that the obligors shall pay no damages.

(*a.*) The decree is, that the plaintiff was not entitled to the rails held by Russell, which had been pledged to the Navy Department. These rails, as has been shown above, were all the rails Russell held, save such as Moorhead had never disposed of, and amounted to 1,069 tons (*ante* p. 7).

As the plaintiff was not entitled to the rails, he was not entitled to an injunction restraining Russell from disposing of them, and the fact that the plaintiff had a right to interfere with some other rails, does not give him any right to an injunction as to these.

(*b.*) The decree that Russell was entitled to no damages against Farley, is, while it stands, an adjudication between the two upon the subject.

It could be pleaded in bar of a recovery against the principal in any action on the bonds, and would therefore operate to discharge the sureties.

Fourth.—It is established by the decisions that the court had no power by its decree in the cause to determine the question of damages.

(*a.*) In New York, where the statute relating to this question was the same in substance as the Minnesota statute. (See N. Y. Code of Procedure, § 222, Stat. Minnesota, Ed. 1873, p. 806, sec. 121), it has been decided that the court has no power by its judgment in the action to award damages against the plaintiffs.

Leavitt *vs.* Dabney, 9 Abb. Pr. R., N. S., p. 373.
See also Lawton *vs.* Green, 64 N. Y., 326.

And the reasoning of the court in those cases, referring to the well settled rule that no damages can be recovered save by virtue of the injunction bond, makes it very plain that the decree cannot determine the question of damages, either *pro.* or *con.*, unless by virtue of some statute or rule of practice which may empower the court to pass upon the rights of the parties to the bond.

In other words, the question of damages can arise only on the bond, and the bond is not the subject of the principal action in which the decree is to be rendered.

(*b.*) In Kentucky, it has been held that a statute providing that, upon the dissolution of an injunction, judgment shall be given by the court against the securities, is unconstitutional and a dead letter.

Hughes *v.* Hughes, Adr., 4 Monr. (Ky.), 42.

(*c.*) In Arkansas, it has been decided that, under a statute similar to that of Minnesota, the court may direct an assessment of damages after the injunction has been dissolved, but that, "in the absence of a statutory provision, a court of equity could not take jurisdiction of the bond, and render judgment upon it."

Bailey *v.* Gibson, 29 Ark., 472.

(*d.*) The case of Novello *v.* James, 5 De Gex., McN. & G., 876 (54 Eng. Ch. R.), was much stronger in the plaintiff's

favor than is the case at bar; for there the undertaking was "to abide by the order of the court as to damages," and, upon the dissolution of the injunction, the Vice-Chancellor "decided that the proper damages would be the costs of the suit."

But on appeal this decision was reversed. The appellate court said it would "*be unjust to the defendant to disregard, or not to give effect to, the undertaking which was the price at which the plaintiff accepted the continuance of the injunction, instead of accepting or proposing that the defendant should be unrestrained and keep an account until the hearing or further order*" (p. 178) * * "*the defendant has a right to insist on having ascertained, either by an officer of the Court of Chancery, subject, of course, to appeal, or by a jury; what, if any, is the quantum of damage that he has suffered.*" * * "*The result having turned out unfavorably to the plaintiff,* * * *it seems to follow that it is the duty of this court to enforce this undertaking. The question, therefore, resolves itself into whether the order made by the Vice-Chancellor satisfies the exigencies of the case. Upon the best consideration that I have been able to give, I do not think that it does. First, I think that this question of damages is a separate matter entirely from the question of the costs of the suit, and I very much doubt whether the question of the costs ought to have been mixed up with the question of the amount of damages sustained by the defendant.* * * I think, therefore, that there must be either a reference to the chief clerk to ascertain the amount of damage sustained by the defendant, or that that question must be put in course of trial at law by a jury" (pp. 879, 880).

See also Phelps *v.* Foster, 18 Ill., 309, p. 311.

(*e.*) In Bein *v.* Heath, 12 Howd., 168, this court held that "*a court proceeding according to the rules of equity cannot give judgment against the obligors in an injunction bond, when it dissolves the injunction. It merely orders the dissolution, leaving the obligee to proceed at law against the sureties, if he sustains damage from the delay occasioned by the injunction*" (p. 179).

And in following this decision in the case of Merryfield

v. Jones, 2 Curtis' C. C. R., 306, Judge Curtis said: "*It is not incident to the general powers of a court of equity to proceed against the principals and sureties on such a bond, and enforce payment of the damages secured by its condition, by a decree. * * I am clearly of opinion that, aside from positive legislation, a court of equity does not afford a remedy on such bonds.*"

See also High on Injunctions, Ed. 1880, sec. 1567.

(*f.*) Thus it is plain that neither the laws of Minnesota, under which the injunction bonds were given, nor the laws and rules of practice controlling the United States Circuit Court, in which this decree was rendered, sustain that part of the decision from which the appeal is taken.

Fifth.—On the merits, and assuming for the moment that the court had power to pass, in its decree, upon the question of damages, that part of the decree from which the appeal is taken should be reversed.

It is difficult to conceive a cause more unjust than that which the plaintiff, as the Receiver appointed at the suit of the bondholders, was urging.

The proof is uncontradicted that every dollar for which the iron was sold, transferred or pledged, went into the work of constructing the roads, so that the bondholders got the benefit of it (p. 356, and see *ante* pp. 5-7 of Statement).

And the reason why the appointment of a Receiver became necessary was that the Dutch bankers ceased to sell the railroad company's bonds, and held on to all they had not sold.

So plain was this made by the proofs that, shortly before the final hearing, it was substantially admitted by stipulation (pp. 106-107).

Yet the plaintiff's effort was to get, for the benefit of the bondholders, the same property that had been sold and used for their benefit. In other words, the effort was to give the bondholders both the property and its proceeds, and to deprive

the parties who had put their work and money into the roads of what they had put in, and of all payment or security for it.

And this effort was coupled with most unjustifiable attacks upon Moorhead, the failure of whose firm at that time, from other causes, weakened his power of successful defense.

The decree, so far as it decides upon the question of title, condemns the plaintiff's action, for it upholds all the transfers made by Moorhead.

It cannot be argued that the pledge to the United States was held valid in consequence of any superior right of the Government.

For the transfers to DeGraff & Co., in consideration of a past due debt, were upheld also.

All that the court decided the plaintiff might have was a portion of two cargoes that had never been pledged or disposed of by Moorhead.

The only real question about this iron was whether it should be treated as the property of the First Division Company, with whose bonds it was bought, or of the Saint Paul Company, for the construction of whose road it was imported by virtue of a contract binding the First Division Company to pay for the construction.

And the court decided this question in favor of the Saint Paul Company and its Receiver.

The only disposition of the question of damages consistent with the tenor of the decree or the merits of the case is that the plaintiff and the parties behind him should pay, as they have agreed by the bond to pay, the damages caused by their wanton interference with property to which they had not the shadow of a just claim.

But the court below, while deciding that there was no ground for such interference, has also held, without a proper hearing of the parties interested in that question, and contrary to such evidence as was taken upon the subject (pp. 316–319, 327, 328), that the plaintiff and his bondsmen have incurred no liability, and that no damage has been done.

Sixth.—The decree cannot be sustained on the theory that the plaintiff was entitled to the injunction as against Russell.

(*a.*) Russell was the consignee of the 1,069 tons. It was rewarehoused by him at Duluth. He was the legal owner and had the legal title. While he was enjoined no one could get it. Enjoining him prevented its use by its owners.

(*b.*) And the court did decide that the plaintiff had no right, title or interest in this iron *claimed by Russell;* that is to say, it decided in favor of Russell (p. 78).

Seventh.—The decree cannot be sustained on the theory that Russell, holding merely as agent for other parties, has sustained no damage.

(*a.*) Such a view applies only to the quantum of damages, and is no answer to the defendant's claim that he has a right to have the question of damages or no damages considered and passed upon in the way prescribed by law.

This right is the same whether his damages turn out to be the penalty of the bond or six cents.

(*b.*) The bond is itself a contract under seal, made with Russell for the benefit of the parties he represented, and the second bond was made after it appeared by his answer that he was acting in a representative capacity.

Russell was, therefore, in respect to these bonds, a trustee of an express trust, within the definition of the Minnesota Statute, and might maintain an action on them in behalf of those beneficially intrusted.

Statutes of Minnesota (Ed. 1873), p. 786, sec. 28.
And see Winslow *v.* Minnesota & Pacific R. R. Co., 4 Minn. R., 313.
Bennett *v.* McGrade, 15 Minn. R., 132.
Winona, &c., R. R. Co. *v.* St. Paul, &c., R. R. Co., 23 Minn., 359.

(c.) The rights of Russell's principals were acted upon through him as a party to the cause, and their remedies should also be preserved through him.

It would be strange, indeed, if a Court of Equity should hold that he was a good enough defendant to represent and deliver so much of his principal's property as was taken under its decree, but not good enough to represent his principal's interests in what was left.

Eighth.—That portion of the decree appealed from should be reversed, and the cause remanded, with leave to the parties to take such proceedings as they may be advised, to enforce the liability of the obligors in the injunction bonds.

RICHARD L. ASHHURST.
THOMAS H. HUBBARD,
Counsel for Appellant.

SUPREME COURT

OF THE

UNITED STATES.

SUPREME COURT U. S.
FILED
OCT 1 1881
JAMES H. MCKENNEY, Clerk

NO. 168.

B. S. RUSSELL,

Appellant,

vs.

J. P. FARLEY, RECEIVER OF THE SAINT PAUL & PACIFIC RAILROAD COMPANY,

Respondent.

Appeal from the Circuit Court of the United States for the District of Minnesota.

RESPONDENT'S BRIEF.

J. W. Cunningham, Printer, St. Paul, Minn.

Supreme Court of the United States.

No. 168.

B. S. Russell, *Appellant*,

vs.

J. P. Farley, Receiver of the Saint Paul and Pacific Railroad Company, *Respondent*.

Appeal from the Circuit Court of the United States for the District of Minnesota.

MOTION TO DISMISS APPEAL.

The respondent moves to dismiss the appeal, on the ground that the decree herein was not final, and therefore not appealable.

It was necessary for the master to take testimony and report to the court, before it could be ascertained. what specific amount of iron the respective parties (aside from defendants De Graff & Co.), were entitled to.

See Decree, page 77, Printed Record.

Humiston vs. Stainthorp, 2 *Wallace*, 106, and cases cited.

PRELIMINARY STATEMENT.

NATURE OF THE SUIT,

The plaintiff, in 1873, was appointed by the United States Circuit Court in the suit of John S. Kennedy and others, *vs.* The Saint Paul and Pacific Railroad Company, The first Division of the St. Paul and Pacific Railroad Company, The Northern Pacific Railroad Company, and Horace Thompson, William G. Moorehead, and George L. Becker, trustees under

the $15,000,000 mortgage hereinafter referred to, and others, receiver of the extension lines of the St. Paul and Pacific Railroad Company, running from St. Cloud to St. Vincent, a distance of 293 miles, more or less; and from Watab to Brainerd, a distance of 55 miles, more or less; "and of all and singular the materials whatsoever *placed* or to *be placed* on said railroads, or *acquired* or to *be acquired* for *the use of the same*, * * * and of all the equipments or *appurtenances* of the said railroads; and of all property, *rights*, franchises, and privileges whatsoever *appertaining* to the said roads, now held or hereafter to be acquired by said company, together with all and singular the tenements, hereditaments, and appurtenances to the said railroad lands and premises, or any part thereof belonging or in any wise appertaining; and also all the estate, *right*, title, *interest*, *property*, possession, *claim*, and *demand whatsoever*, as well in law as *in equity* of the said St. Paul & Pacific Railroad Company in, to and *concerning* the said railroads," * * * and by the terms of the order of appointment "the defendants in said suit, and each of them having in their, his or its posssession, or under their, his or its control, any of the property hereinbefore mentioned, are ordered forthwith to deliver the same into the possession of said receiver."

See exhibit "A" of the complaint in the suit now before the Court. Printed Record folios 21 to 35, pages 7 to 12

The present suit was brought by the receiver to enjoin the principal defendants, De Graff & Co. and Russell, from interfering with a large quantity of iron rails purchased for the use of said railroads, and a preliminary injunction issued. Printed Record pages 2 and 32.

ORIGINAL PURCHASE OF IRON

All of the said iron was so purchased in Great Britain, in the year 1872, and there paid for out of the funds in the hands of Lippman, Rosenthall & Co., arising from the sale of the bonds secured by a certain mortgage or trust deed hereinafter referred to, executed by the St. Paul and Pacific Railroad Company to William G. Moorehead, Horace Thompson and George L. Becker, trustees, upon the said roads, &c., through orders signed by Moorhead as trustee, and Becker as trustee and president of the First Division of the St. Paul & Pacific Railroad Company, and running to the said Lippman, Rosenthall & Co.

See stipulation paragraphs 3 and 10, Printed Record, pages 106 and 107.

THE MORTGAGE AND PAPERS THEREWITH CONNECTED.

ARTICLES OF AGREEMENT, in writing bearing date April 1, 1871, were entered into between the First Division Company and the St. Paul Company, whereby the First Division Company agreed to construct and equip the said extension lines with the proceds of 15,000,000 of dollars in bonds of the First Division Company, payable on the first day of April, 1871, which bonds the St. Paul Company were to receive as a loan, and which they agreed to assume and secure by mortgage "in the most approved form" on their franchises, prospective land grant, &c., and the St. Paul Company was to execute a lease of the said roads to the First Division Company for 99 years. This instrument was acknowledged on the 14th day of July, 1871.

Folio 223, page 78 Printed Record.

The LEASE provided for in said agreement from the St. Paul Company to the First Division Company, bears date on the first day of April, 1871, was executed by both companies, and was acknowledged on the 14th day of July, by some of the officers of both parties, and on the 12th day of August by the other officers of the parties, and filed and recorded in the office of the Secretary of State, on the 31st day of August, 1871.

The lease refers to the terms of the agreement and to the mortgage, and provides that any and all "materials whatsoever, which pursuant to this lease or otherwise, shall or may be acquired or furnished for the use of the said railroads, or either of them, by the said party of the second part (The First Division Company), its successors or assigns shall by the *mere acquisition thereof for such use*, become and be part and parcel of the property granted by the deed of trust or mortgage aforesaid, bearing even date herewith, made by the party of the first part (the St. Paul Company), to secure said issue of bonds of the said party of the second part (The First Division Company) to the amount of fifteen millions of dollars, and become and be in all respects subject to the lien and operation thereof, in the same manner and with the same effect as if said property had been acquired by the said party of the first part hereto for such use as is also provided and

declared in the *fifteenth* article of said deed of trust or mortgage," and further provides that the said First Division Company "shall and will do and perform any and every act and thing mentioned or required in the deed of trust or mortgage aforesaid to be by it, or them, done and performed.

See lease folio 273, page 100 Printed Record.

The MORTGAGE contemplated by said agreement and referred to in said lease from the St. Paul Company to Thompson, Moorehead and Becker, trustees, bears date April 1, 1871, was acknowledged on the 13th day of July, 1871, and 12th day of August, 1871, and recorded in the office of the Secretary of State of Minnesota, on the 30th day of August, 1871. Printed Record, folios 221 to 270. Pages 78 to 99.

The mortgage, after reciting among other things the terms of the agreement that the First Division Company has agreed to *loan* and *advance* to the St. Paul Company fifteen millions of dollars of its bonds "*in the construction and equipment of said railroads,*" and that the St. Paul Company "has agreed to assume and secure the payment of said bonds, and also reciting, "And whereas, the said bonds, or *so many thereof as may be necessary*, are to be issued and negotiated *for the purpose of procuring means to construct and equip the said lines of railroad,*" grants to Moorehead, Thompson and Becker, in trust as security for the payment of the bonds the said lines of road (no part of which had then been constructed), "together with the equipments and appurtenances of the said railroads respectively, and the rights, privileges and franchises thereunto respectively belonging or in any wise appertaining, or which shall or may at any time *hereafter* thereunto belong or any wise *appertain.*"

Page 86, folio 241, Printed Record.

It also grants "all materials whatsoever placed and to be placed on the said railroads respectively, or acquired, or *to be acquired* for the use of the same," or for "constructing the same;" and all property whatsoever appertaining to the said railroads, now held by the party of the first part, or hereafter to be acquired by the said party of the first part, together with "all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in

equity, of the said party of the first part in, to and concerning the same, with the appurtenances."

Folio 241, &c.

Article 15 of the mortgage agreed to by the First Division Company in the lease as herein before shown, is as follows:

"ARTICLE FIFTEENTH.—The First Division of the Saint Paul & Pacific Railroad Company having contracted, as aforesaid, to construct and equip said roads, and it being contemplated by said party of the first part (the Saint Paul Company) to lease said railroads to said company for a term of ninety nine years, it is hereby expressly provided, agreed and declared, that any and every such lease shall be in all respects subject to these presents, and to the due enforcement and execution thereof, and to all and singular the powers, rights and trusts herein contained; and it is hereby further provided, agreed and declared, that any and all rolling stock, equipment and *materials whatsoever*, which pursuant to such *lease* or *otherwise*, shall or *may be acquired* or *furnished* for the use of said railroads, or either of them, *by the said First Divison of the St. Paul & Pacific Railroad Company* shall, by the *mere acquisition thereof for such use*, become and be part and parcel of the property hereinbefore granted, and become and be subject in all respects to the lien and operation thereof, in the same manner and with the same effect as if such property had been acquired by the said party of the first part hereto for such use."

Printed Record, folio 265, page 97.

The charter of the St. Paul & Pacific Railroad Company (the First Division Company operating under the same charter) provides for the issuance of bonds and for the execution of mortgages or deeds of trust upon any and all their "estate, real, personal, or mixed, in possession or in *expectancy*," and that any such mortgage, or deed of trust, and every discharge or satisfaction thereof may be recorded in the office of the Secretary of the Territory or future State of Minnesota, in a proper book kept for that purpose; and the certificate of such recording, endorsed on such mortgage or deed of trust, shall have the same effect as if recorded in the several counties through which such road may run, or in which such land may be, and such *record* in the office of the Secre-

tary shall be sufficient *notice to all persons*. Sec. 21 of charter. Sec. 28 *ibid*, declares the act to be a public act, and that the same shall be favorably construed to effect the purposes thereby intended.

Session Laws of Minnesota, Extra Session of 1857, page 3.

THE $15,000,000 BONDS.

The $15,000,000 of bonds, issued by the First Division Company, and secured as aforesaid, except $30,000 retained by Moorehead, were placed in the hands of Lippman, Rosenthal & Co., (bankers in Holland), who sold $10,700,000 of said bonds, and retained the remaining $4,270,000 thereof, as security for advances.

See admission in pleadings.

Russells answer, folio 39 &c., stipulation folios 288 &c.

From the proceeds, about 34,000 tons of iron rails were purchased (including the ones in suit), the amount required to complete the road—the cost price whereof, exclusive of duties, was $50 per ton.

Stipulation folios 291 &c.

FAILURE OF THE ENTERPRISE.

In June, or in the beginning of July, 1872, the negotiation of bonds and the remitting of money from Holland ceased, and on the 15th day of October, 1872, and probably before that date, all work on the extension lines was suspended, and of the work which the First Division Company had contracted to do—viz.: to grade, iron, and furnish with rolling stock, so as to obtain the land grant of ten sections per mile, for 293 miles from St. Cloud to St. Vincent, and 55 miles from Sauk Rapids to Brainerd, only 140 miles of the St. Vincent Extension, in widely detached sections, viz: 36 miles from St. Cloud to Melrose, and 104 miles crossing the Northern Pacific at Glyndon, and 4 miles of the Brainerd Extension had been ironed. As to the remainder of the roads, the grading was incomplete and in fragments, and of rolling stock there was none. Both corporations were financially worthless, and the entire iron purchased as aforesaid, except a small quantity, and except what had been laid in the roads, 12,624 tons, had been disposed of by Moorehead. Stipulation folios 291, etc.

OBJECT OF THIS SUIT.

The object of this suit on the part of the receiver who was appointed as such on the application of the bondholders,

under the $15,000,000 mortgage, was acting through John S. Kennedy & Co., their trustees, was to save from the wreck of the enterprise and bring into Court, so that the rights of all parties in the suit of Kennedy vs. Moorehead and others, could be adjudicated upon in the premises, a fragment of the iron purchased with the bondholder's money, and which the defendants in this suit were about to sell and dispose of, and the greater portion of which, when the injunction herein was served, was about to be transported by the defendant Russell, beyond reach of the power of the Court, to a foreign country.

DEFENDANTS WETMORE, PEARSALL AND DENNY.

These defendants were trustees under the $15,000,000 mortgage, duly appointed to supercede Becker, Thompson and Moorehead. They claimed that their mortgage was a lien on the iron in suit, and ask that the prayer of the plaintiff be granted, subject to their lien, and that in case the plaintiff's prayer in full could not be granted, that the iron might be adjudged to be subject to the lien of said mortgage, and that the defendants, other than said trustees, might be restrained from selling or otherwise disposing of the same. See their answer. Folio 68, page 24, Printed Record.

CLAIM OF DEFENDANTS DEGRAFF & CO.

These defendants claimed that on the suspension of their work upon the extension lines, on or before the 15th day of October, 1871, there was a large sum of money due them, under their construction contracts, and that on the 27th day of December, 1872, the First Division Company, acting by defendant Moorehead, their agent, by bill of sale dated Nov. 11, 1872, transferred the 2,700 tons of rails to DeGraff & Co., in consideration of $202,500, applied on their account, for construction.

See their answer, page 18, Printed Record.

CLAIM OF DEFENDANT RUSSELL.

The defendant Russell claimed that the 1,860 tons, in suit with other trust iron, was assigned to persons advancing moneys thereon, and by such persons assigned to the Secretary of the Navy, and that the same was the property of the United States, and that Russell was about to ship the same, as agent of the United States to Dover, Canada, when

stopped by the injunction herein. He also claimed damage for such stoppage. Page 13, Printed Record.

CLAIM OF DEFENDANT LEWIS TO SAME 1,860 TONS AT DULUTH.

The defendant Lewis was the trustee in bankruptcy of the estate of W. G. Moorehead, and claimed that Moorehead contracted with the First Division Company to build the extension lines for the proceeds of the bonds; that Moorehead purchased the iron with the proceeds of the bonds, and that it was his iron and not covered by the mortgage. He also claimed that of the 1,860 tons, there remained unsold and the property of Moorehead, to which Lewis was entitled as his trustee, the following:

	Rails.
Ex Clara & Carl, - -	576
" Lidskolf, - -	2175
" M. Lowerson, - -	2759
Total rails, - -	5511 = 1090 tons.

That of the remaining part of the 1,860 tons, the following quantities (according to answer), viz.:

Shipments.	T.	Cwt.	Qr.	Lbs.
Per "Nancy M" - -	589	12	8	9
" "Presto," - - -	280	0	0	2
" "F. Minde," - -	199	19	2	19
	1068	12	2	24

(Should be 770 tons, as hereafter explained), were sold and disposed of by said Moorehead, for advances to pay labor &c., on the extension lines, the said Moorehead not having received sufficient funds to continue the work on account of the failure to negotiate bonds, to Vibbard, Foote & Co. of the city of New York, and by them to Jay Cooke, McCullough & Co., of London, England, and by the latter in September or October, 1873, in pledge, in connection with other property to the United States as security for an indebtedness of Jay Cooke, McCullogh& Co. to the United States of $600,000 and upwards. That in November, 1873, William G. Moorehead, of the firm of Jay Cooke & Co., of America, together with other members of that firm, who were also members of the London house of Jay Cooke, McCullough & Co., were adjudged bankrupts on petition filed September 25, 1873, and that on February, 1874, Lewis was appointed

sole trustee in bankruptcy of all the joint and separate estate of said bankrupts. That "the said indebtedness of the said Jay Cooke, McCullough & Co. to the United States was never paid by that firm, and since this defendant has been trustee as aforesaid, he had been compelled to pay and had paid to the United States the said indebtedness out of moneys belonging to the separate estates in bankruptcy of the said Jay Cooke, William G. Moorehead, Henry D. Cooke, Pitt Cooke, Jay Cooke, Jr., H. C. Fahenstock, and George C. Thomas" (of the firm of Jay Cooke & Co. and of Jay Cooke, McCullough & Co.), "by reason of which payment this defendant has become subrogated to the rights of the United States in said rails; all of which would be required to reimburse this defendant as trustee as aforesaid for the moneys so paid out by him."

See answer of defendant, Lewis, page 71, Printed Record.

DECREE OF THE CIRCUIT COURT.

The court below dismissed the plaintiffs bill as to the 2700 tons of iron claimed by DeGraff & Co., also as to that part of the 1,860 tons claimed by Russell and Lewis, which had been transferred to the Navy Department (either 1068 or 770 tons) and awarded the balance of the 1,860 tons to Farley, the plaintiff.

Decree of Judge Dillon, page 77, Printed Record.

But the Court decreed that neither Plaintiff nor Russell was entitled to costs or damages. Alleged error of the Court below.

Defendant Russell is the only party who appeals to this Court, and the only error alleged by him is the refusal of the Court below to award *him* damages as claimed in his *answer;* alleged to have been sustained by him through the injunction as to the so-called 1,068 (or 770) tons of "Navy Iron," transferred to the *United States*.

See appeal bond page 384, folio 909.

I.

POINTS AND AUTHORITIES.

Russell was not entitled to damages because the Court below never decided that *he* was entitled to the Navy iron.

Lewis also claimed it. The plaintiffs bill was simply dismissed. If Russell had desired an affirmative judgment on that point he should have filed a cross bill. His answer in

the State Court would not stand in the place of a cross bill without an order of the Court to that effect, which order was never had.

II.

Even if the Court had decided, Russell was entitled to the Navy iron; his damages could not be adjudicated in this action. His remedy was an independent suit on the bond. At all events, a cross bill, setting out his damages was necessary.

Phelps vs. Foster, 18 *Ill.*, 309.
Bean vs. Heath, 12 *Howard*, (*U.S.*) 168.

III.

Russell was not entitled to damages or costs because as far as he could (the re-warehousing being in his name), he unjustly detained from the plaintiff from a date prior to the commencement of the suit, an amount of iron about equal to that transferred to the Navy Department, and therefore the damages to the plaintiff occasioned by Russell and those now alleged to have been suffered by him were about the same. See Russell's answer, folio 45, etc., pages 15, 16 and 17, Printed Record, wherein he says the United States owns the entire 1,860 tons, whereas the court below awarded to the plaintiff all of the 1,860 tons, except the Navy iron.

There is no evidence in the case that the United States ever had a particle of title to the iron awarded to the plaintiff.

In fact, the amount of iron wrongfully withheld from plaintiff by Russell, exceeded that detained by the injunction, leaving Russell debtor to plaintiff on the damage question, as will be readily seen.

PLEDGED TO NAVY DEPARTMENT.

Ex. Nancy M.	2,989 bars weighing, tons	.	589-12-8-9
Ex. Presto	1,422 "	.	280-0-0-2
Familias Minde,	1,015 "	.	199-19-2-19
Total tons	.	.	1,069-12-2-24

When this suit was commenced there was at the custom house only 290 tons of the cargo of the Nancy M., leaving only 770 tons instead of the 1,069 tons of the 1860 tons claimed by Russell in his answer.

Russell's answer. Folios 39–45, pages 14 and 16 printed record. As to above being the iron claimed by the Navy Department See answer of Lewis, folio 212, page 75 Printed Record.

Testimony of French, folio 770, Printed Record, page 324.

Bill of Sale to Navy Department, folio 814 Printed Record, page 343, Account Navy Department with Williams, Deacon & Co., folio 817, Printed Record, page 344. As to there being only 290 tons instead of 589 tons of the cargoes of the Nancy M. at Duluth, when the injunction was served. See Exhibit. Selby's testimony, folio 646, page 263, Printed Record, giving amount in Warehouse of the Nancy M.

	Pounds.
As	448,000
And Exhibit to same testimony, folio 662, page 271 Printed Record, giving further amount in warehouse of Nancy M. as	201,600
Total pounds	649,600

This amount at 2240 pounds to the ton equals 290 tons.

While the injunction therefore restrained the sales by Russell of 770 tons of iron, Russell by his answer restrained from the plaintiff the difference between 770 tons and 1860 tons, =1090 tons.

The appellant, *Russell*, had no right to damages for the Navy iron, if any damages were suffered.

The party claiming that iron was the United States'.

Russell was simply the agent of Moorehead.

In folio 361, Printed Record, page 143, Mr. Russell testifies: "I was in possession of the iron mentioned in the papers here. I have it in my possession as shipping agent of the St. Paul & Pacific Railroad Company. Mr. Wm. G. Moorehead employed me as shipping agent. The correspondence was all with Mr. Moorehead, as construction agent of the St. Paul & Pacific Railroad Company.

"The iron was consigned to me in my own name at Duluth. My impression is that the bills of lading were to Wm. G. Moorehead, construction agent at Duluth. They were either to him or to me. All the iron had been shipped in the same way." All the re-warehousing bonds for the 1860 tons of iron, from page 242 to page 272, of Printed Record, show that Russell acted as the agent of Moorehead.

On the 19th of January, 1877, Mr. Moorehead testified:

Q. What relations have subsisted, and now subsist, between you and Mr. Russell in regard to this iron?

A. He has no claim upon the iron—Mr. Russell

Q. Under what proceedings does he hold the iron?

A. It was consigned. He did the Custom House business. I think consignments were made to him. I am not quite sure of that. He had charge of the iron. I am not sure whether his name was mentioned in the consignments or not.

Q. He had charge of the iron for whom?

A. For me; in fact, as agent.

Q. Well, then, that iron still belongs to you?

A. If there is any there that is over, it does.

Q. That is over the 2,700 tons? (The De Graff iron?)

A. Yes. sir; and the amount hypothecated here, if there is any besides that.

See folio 850, Printers' Record, page 358.

Mr. Moorehead, it is true, testifies subsequently that he *thinks* he sent Mr. Russell a bill of sale for the iron, which had not been disposed of. Folio 852, page 359, but he neither states the quantity nor for the benefit of what parties, nor is the bill of sale produced.

That it was not Russell's iron, see also his letter to Moorehead, page 221 of Printed Record.

As agent of Moorehead, Russell had no rights in the premises, for the reason that Moorehead's interests, if he had any, were represented by Lewis, his trustee in bankruptcy, who has not appealed herein.

Indeed, Russell himself does not claim to have been the owner of the iron, for he says in his answer that it was the property of the United States and that he was the *agent* of the United States.

He does not set up, or prove in any way, that the United States authorized him to claim damages.

This certainly was necessary before he would have any standing in court upon a claim for damages.

The fact is that the Court before the hearing directed that the United States might appear as a party and a copy of the order was served on the United States District Attorney, but there was no appearance. This order has been omitted from

the record. A certified copy was some time since sent to Mr. Hubbard of New York City, counsel for Russell, with a request that he consent that it be incorporated in the record, but to which request no answer as yet has been received. The same will be sent to the clerk of the Court and an application made to supply the record in this regard.

IV.

But even the United States had no right to damages for the navy iron at the rendition of the decree herein, because they had on the 23d day of Nov. 1876, sold and disposed of this hypothecated iron and received the amount of their claim in full. (See folio 807, page 339 of printed Record, wherein the Secretary of the Navy balances the account), and there is no direct admissable evidence in the case that the *United States* ever paid out or suffered any of the damages alleged, or authorized Russell, Moorehead's agent, to prosecute therefor.

If the United States did pay anything for damages it was fully settled for by Jay Cooke, McCulloch & Co., (French's testimony, folio 782, page 329 Printed Record.) See also Lewis' explanation of the transaction in his answer, Printed Record, folio 214, p. 75.

Russell did not represent that firm, and if he did, they could not claim a return of such damages for the reason that Morehead was a member of that firm, and as against them (they being chargeable with notice by reason of Moreheads membership in the firm,) the plaintiff was entitled to the iron which Moorehead held in trust and had no right to pledge.

That Moorehead's relation to the iron was a trust relation was decided by the court below when it awarded a portion of the Moorehead rails to plaintiff. See also

Weetjen and others vs the St. Paul and Parific R. R. Co., 4 *Hun*, (*N. Y.*) 529—*involving a part of the same general lot of iron.*

See also

Phillips vs Winslow, trustee, 18 *B. Munroe* 431.

Pennock, et al vs Geo. S. Coe, and others, 23 *Howard*, 117.

Dunham vs The Cincinnati and Peru R. R. Co., 1 *Wallace*, 254.

Galveston R. R. Co. vs Cowdry, 11 *Wallace* 459.

Again, The United States, Russell's alledged principal, were not entitled to damages by reason of the injunction, for the reason that the injunction was void as against the United States. They were not restrained by it.

Russell was not entitled to damages, because the Navy iron should have been awarded to plaintiff. The Court below erred in dismissing the bill as to such iron. This iron arrived at Duluth, Minnesota, at the following dates in 1872:

	Lbs.
Nancy M. Sept. 23,	672,000.
" Oct. 12,	201,600.

Printed Record, pages 263 and 271.

Presto, Sept. 30,	403,200.
" Oct. 12,	224,000.

Printed Record, pages 267 and 273.

Familius Minde. Sept. 30,	224,000.
" " Oct. 3,	224,000.

Printed Record, pages 265 and 269.

The trust deed, or mortgage, on the present and prospective property of the road, for which this iron was acquired, (page 82, of Printed Record, and Special Article 15, page 97), was filed in the office of the Secretary of State of Minnesota, on the 30th day of August, 1871, folio 221, page 78, and folio 269, page 99, of Printed Record, and by a public law of Minnesota, hereinbefore referred to, this was notice to all persons. Neither the Navy Department nor its grantors obtained an assignment of the iron in question, until long after the iron arrived in Minnesota and became subject to the mortgage, and they chargeable with notice.

Moorehead pledged the iron to Jay Cooke & Co., Oct. 7, 1872, but this pledge was afterwards cancelled, and, in April, 1873, about five months after the iron arrived in Minnesota and became subject to the lien of the mortgage, Moorehead sold to Vibbard, Foote & Co., through whom Navy Department claims. Testimony of Fahnestock, Printed Record, page 300, folios 708 to 711 and pages 305 and 306, folios 724, &c.

French's testimony, page 322, folio 776, &c.

See law heretofore cited in statement of case, providing for mortgaging the personal as well as real property of the road, and its record in the office of the Secretary of State, being notice to all persons.

Authorities from other States as to the necessity of recording in the Registers' office as a chattel mortgage have no application here where the law provides differently.

HENRY J. HORN,
Solicitor for Respondent.

October 1881.